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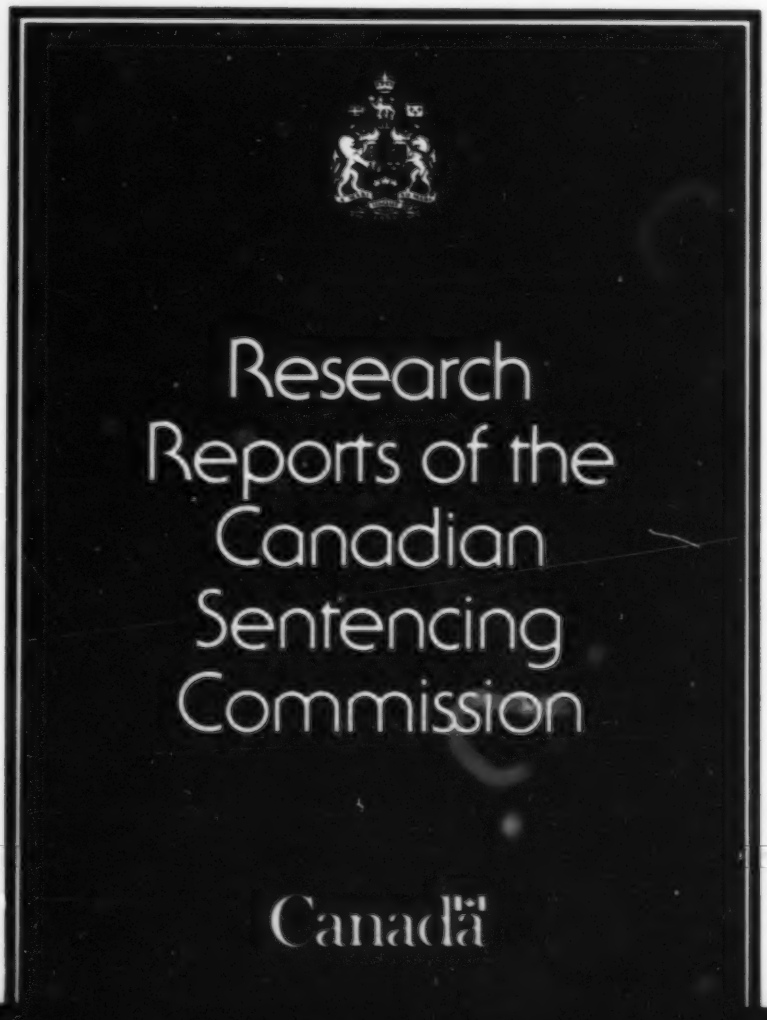
INFORMATION SYSTEMS FOR SENTENCING GUIDELINES: RECENT EXPERIENCE



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INFORMATION SYSTEMS FOR SENTENCING GUIDELINES: RECENT EXPERIENCE

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1988

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CHAPTER 1.
INTRODUCTION

1.1. PURPOSE OF THE PROJECT

Current debates in Canada regarding sentencing require more complete and accurate information describing:

- sentencing practices,
- the situations in which sentencing decisions are made, and
- the impact of alternative sentencing practices.

Such information is of special importance to debates regarding the need for sentencing guidelines or the alternative structures and strategies for approaching such guidelines.

The Canadian Sentencing Commissior therefore undertook this project to try to learn from the experience of other jurisdictions which had developed and maintained information systems to support sentencing guidelines -- their experience prior to, during, and after they had implemented guidelines.

1.2. THE PROJECT IN PERSPECTIVE

The Commission recognized that specifying the types of systems required for the collection of data on sentencing and the sentencing process in Canada would be a very complex and difficult undertaking. This project was seen as only the first step in that process. Much work would still remain to refine the broad general strategies developed from initial findings of this study.

It was also recognized at the outset that the effectiveness, efficiency and appropriateness of any system for collecting, storing, and providing sentencing information can (and should) be evaluated from two perspectives:

1 the DEMANDS (or requirements) for information, and

2 the techniques with which the system SUPPLIES (or satisfies) those demands.

From the "DEMAND" perspective, a good sentencing information will provide:

- the RIGHT INFORMATION
- to the right PEOPLE
- at the right TIME
- in the right FORMAT.

From the "SUPPLY" perspective, A good sentencing information system will collect, store and communicate the right information using:

- the right ORGANIZATIONS,
- the right TECHNOLOGY, and
- the right amounts of other RESOURCES.

Further, since information is only of value if it improves decision-making, it is important that questions concerning how sentencing information system might be "supplied" must be addressed after one has carefully investigated both the specific sentencing decisions that must be supported, and the organizational and procedural structures within which those sentencing decisions will be made.

Obviously, when this project was started, the Commission had not decided whether or not to recommend that sentencing become more structured in Canada -- let alone which form such structuring would take. However, it would be expected that the answers to certain general questions regarding information system strategies and principles would apply irrespective of any specific sentencing practices or specific types of sentencing policy or structure -- for instance, questions such as:

"Is information for monitoring current and recent practices important to any sentencing decision-making system?",

"How long has it taken other jurisdictions to develop sentencing information systems?",

and,

"Are the information systems required to support most forms of sentencing guidelines so prohibitively expensive that guidelines become infeasible to implement adequately?"

The answers to such questions would constitute valuable information regarding both the operational feasibility of, and the administrative resources required to support, many different types of recommendations regarding sentencing policy and structure.

Second, answers to certain questions could have an important impact on how the Commission should proceed with the main part of its work -- questions such as:

"Does one require accurate and complete data on past and current sentencing practices before one can develop sentencing guidelines?"

or,

"How important is it to have information on the probable impact of alternative sentences?"

Third, the initial research would identify the information system-related areas requiring further research, especially research that requires further consultation with different groups in different Canadian jurisdictions. This type of knowledge would allow the Commission to ensure that such more intensive research were undertaken in a more focussed and efficient manner than would be possible given current knowledge in the area.

1.3. METHODOLOGY

Parts of this report are based on a review of literature on sentencing information systems in general, and on the special experiences of the 3 jurisdictions chosen for detailed analysis:

- Washington (Washington Sentencing Guidelines Commission),
- Pennsylvania (Pennsylvania Commission on Sentencing), and
- Minnesota (Minnesota Sentencing Guidelines Commission).

However, the primary sources of information were the intensive interviews conducted over a 2 day period in each of these sites. A major proportion of these interviews involved senior staff of the site's sentencing commission, but (as shown in Figure 1.1) interviews were also conducted with court information system officials, court administrators and court planners and financial analysts.

In all cases the interviewers were impressed with the frankness, willingness to help, and enthusiasm demonstrated by the persons interviewed. For giving so freely of their time at such short notice, and for responding so positively for our requests for follow-up documentation, those people deserve our sincere thanks.

FIGURE 1.1
INTERVIEWS CONDUCTED IN EACH SITE

Washington Sentencing Guidelines Commission

- David Fallen, Research Director for the Commission
- Jack O'Connell, Office of Financial Management
- Carol King, Deputy Director, Information Systems Division, Office of Administrator for the Courts

Pennsylvania Commission on Sentencing

- John Kramer, Executive Director
- Rob Lubitz, Associate Director
- John McCloskey, Research Associate
- Cynthia Kempinen, Assistant Research Director

Minnesota Sentencing Guidelines Commission

- Kay Knapp, Research Director
- Deborah Dailey, Research Analyst
- Dale Goode, Office of the Administrator for the Courts

1.4. FORMAT OF THE REPORT

Chapter 2 begins the report with a discussion of the structural characteristics of the environments within which the three commissions undertook their work. Special attention is given to assessing the degree to which the experiences of any of the three sites can be expected to be relevant to the Canadian environment.

Chapter 3 then describes the experience of each site during the period between the formation of the guidelines commission and the development and ratification of a specific set of sentencing guidelines. Separate sections are devoted to: the state of the existing operational information systems maintained by other criminal justice agencies; the political support enjoyed by the guidelines and guidelines information development efforts; the initial efforts of the commissions to collect the special baseline data required to support the guidelines process; and finally, special issues related to and different aspects of the initial data collection efforts.

Chapter 4 is similar to Chapter 3, but instead considers issues that would be encountered after the implementation of a specific set of guidelines -- i.e. issues related to the development, operation and improvement of an ongoing information system to support the ongoing requirements of the commission and others involved in the sentencing and sentencing guidelines processes.

Both Chapters 3 and 4 conclude with a summary of the main findings developed in each chapter.

(For the reader interested in the more technical aspects of the information systems examined -- or of the research process -- a set of 3 (separately bound) Appendices can be obtained.

Appendix A provides a very detailed description of the data collected in each of the sites visited. That description, for each of the 3 sites, consists of: a listing of each of the data elements collected; the allowable values for each data element; whether or not the data element was collected through a special baseline or post-guidelines project, or through an ongoing guidelines information system; whether the data element was collected from an automated or manual system; and whether or not the data element was collected for each case, each count, each defendant, etc..

Appendix B contains a selective listing of the relevant reports that have been prepared by each of the sites visited, and Appendix C contains the structured interview guide used to collect information in each site.)

CHAPTER 2.
BASIC STRUCTURE OF JURISDICTIONS

2.1. INTRODUCTION

If Washington, Minnesota and Pennsylvania were to exhibit important differences -- both among themselves and with Canada -- one could not simply assume that the particular experiences of any one of the three jurisdictions would be directly applicable to Canada. An awareness of certain of the differences and similarities among the jurisdictions is therefore necessary to estimate when their experiences would and would not be transferrable to Canada.

The sections that follow briefly describe and compare the three jurisdictions in terms of the following basic "structural" dimensions:

- Organizational structure of the criminal justice system,
- legal classification and volumes of criminal offences,
- court structure,
- prison structure,
- law enforcement structure,
- special organizations,
- Geographical characteristics, and
- Guidelines Timetable.

2.2. ORGANIZATIONAL STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM

2.2.1. LEGAL CLASSIFICATIONS AND VOLUMES OF CRIMINAL OFFENCES

The likely complexities, costs, and appropriate strategies for developing and operating a sentencing guidelines information system (SGIS) will depend directly on the volumes of offences and convictions for which data will have to be collected, stored, analyzed and reported. These volumes will in turn be largely determined by decisions made regarding

> "Which types of offences will fall within the scope of the guidelines -- and therefore within the scope of the SGIS?"[1]

---

1 The questions set off in quotation marks in the text correspond to questions from the structured interview guide used in the site studies.

Even if Canadian guidelines were restricted to "criminal" offences, the volumes of offences covered could still vary substantially depending on whether the scope of the guidelines covered:

- all "criminal offences", versus only offences under certain specific acts (e.g. The Criminal Code, the Food and Drug Act, and the Narcotics Control Act);

- all "summary and indictable" offences within certain Acts, versus only offences that could be tried by way of indictment, versus only offences that were tried by way of indictment; and/or

- all offences within an Act, versus only certain offences within the Act (e.g. should the guidelines cover "drinking and driving" offences?).

Alternatively, many assume that a necessary condition for the successful ongoing operation of sentencing guidelines is the existence of an information system capable of monitoring sentences and sentencing practices. From that perspective, the scope of offences that will be covered by sentencing guidelines should be limited to a set of offences for which it is feasible to collect information. The question then becomes,

> "Which types of offences could feasibly be handled by a sentencing information system -- and therefore should be included within the scope of the sentencing guidelines?"

As shown in Figure 2.1, in each of the three States visited, "criminal" offences are divided into at least two legal classifications: misdemeanors and felonies -- with different jurisdictions sometimes identifying different subclassifications within each. Both Washington and Minnesota have decided that the sentencing guidelines (and thus the sentencing information systems) would apply only to convictions for felony offences.

Canadians and Americans often assume that there are only minor differences between Canadian "summary" and American "misdemeanor" offences, and between Canadian "indictable" and American "felony" offences. If that were true, one might conclude that the Minnesota and Washington choices suggest that Canada should limit the scope of any SGIS to indictable offences (or perhaps to indictable and "hybrid" offences[2]).

However, such a conclusion would not be valid. First, Figure 2.1 shows that the demarcation line between misdemeanors and felonies varies widely in these 3 states -- from maximum sentences of one year, to maximum sentences of five years. Second, in two of the states, gross Misdemeanors carry maximum penalties (i.e. up to 1 year in jail or 2 years probation) that are much higher than the (6 months in jail) maximum for Canadian summary offences. The choice of excluding misdemeanors in

---

2. i.e. offences for which the prosecution has an election of either trial by way of summary conviction or trial by indictment.

FIGURE 2.1
LEGAL CLASSIFICATION AND VOLUMES OF CASES

TYPE OF OFFENCE	APPROX # DISPOSED PER YEAR	MAXIMUM SENTENCE	COURT OF TRIAL
WASHINGTON [1983][3]			
Other Misdemeanor		90 days	District
DWI	32,268		
other Crim Traffic	104,564		
non-traff Misdem	109,654		
Gross Misdemeanor	)	1 year in jail, $1,000 fine	District
	)		Superior (if reduced from felony)
	) 16,526		
Felony	)		District (for some prelim. inquiries)
			Superior
Federal offences			U.S. Federal Courts
MINNESOTA [1980]			
Misdemeanor - incl.		3 months in jail (1 yr probation)	County/ District
DWI (1st Offence)			
other Crim Traffic			
non-traff Misdem			
Gross Misdemeanor			County/ District
non-traff Misdem		1 year in jail, $1,000 fine	
DWI (2nd+ offence)			
Felony	6,000 (approx)		District (Appeals in Intermediate Appellate, or Supreme)
Federal offences			U.S. Federal Courts

3. Washington State, Office of the Administrator for the Courts, the Annual Report of the Caseloads and Operation of the Courts of Washington, (1983)

FIGURE 2.1 (continued)
LEGAL CLASSIFICATION AND VOLUMES OF CASES

TYPE OF OFFENCE	APPROX # DISPOSED PER YEAR	MAXIMUM SENTENCE	COURT OF TRIAL
PENNSYLVANIA [198X]			
Summary		90 days[4]	Municipal or District judges
Misdemeanor 3		1 year	
Misdemeanor 2		2 years	Court of Common Pleas
Misdemeanor 1		5 years	
Felony 3		7 years	
Felony 2		10 years	
Felony 1		20 years	
Murder		Life	
Federal Offences			U.S. Federal Courts

---

those states thus excludes a higher proportion of offences from the guidelines (and the SGIS) than would a decision to exclude summary offences in Canada. The caseload statistics in Figure 2.1 imply that in Washington State over 90% of criminal matters are excluded from the guidelines[5].

Third, the exclusion of misdemeanors in Washington and Minnesota excludes certain specific types of offences likely to be included in any Canadian guidelines system. For instance, it is unlikely that Canadians would favour excluding "driving while impaired" (DWI) offences -- offences which are classified as hybrid indictable/summary offences and can

---

4 minimum sentences were [before guidelines] 1/2 the maximums. Note as well that in Pennsylvania guidelines do not supplant legal maxima.

5. Unfortunately, given the state of court caseload information systems in Canada, one cannot accurately estimate the percent of dispositions accounted by dispositions of summary cases.

account for between 20 and 40 percent of Canadian court convictions[6].

Fourth, it should be noted that in Pennsylvania the decision was made that the guidelines should cover misdemeanors as well[7].

Finally, although restriction of the scope of the Guidelines has some obvious advantages from an organizational and budgetary point of view[8], even those interviewed in the two jurisdictions in which misdemeanors had been excluded initially indicated that there were valid reasons for extending the scope to include misdemeanors. For instance, including misdemeanors may be necessary to maintain proportionality in sentences - especially to maintain a balance between "short prison" and non-custodial sentences for felonies on the one hand, and relatively severe non-custodial (i.e. 2 years probation) and custodial (i.e. 1 year) sentences for misdemeanors on the other. If the use of non-incarceral sentences for certain types of serious offences (e.g. non-violent property offences) were to continue to be of major policy significance in Canada, then there would be an even greater need to consider both summary and indictable offences within any system of guidelines.

Therefore, the volumes of offences to be handled by a Canadian SGIS would be expected to be considerably higher in a relative sense (i.e. relative to the sizes of the general populations of the states visited and Canada).

It should also be noted that the numbers of cases handled by the sentencing information systems -- especially in Washington and Minnesota -- are, in an absolute sense as well, much lower than would be expected in Canada. For instance, the numbers of cases sentenced within the guidelines annually in Washington and Minnesota were in the neighbourhood of 12,000 and 6,000, respectively[9]. Pennsylvania, with a much larger general population than Washington (i.e. 12 million vs. 4 million) handles roughly 42,000 sentences for roughly 31,000 sentenced offenders

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6. see Hann, R.G., Sentencing Practices and Trends in Canada; Overview, report presented to the Department of Justice Canada. (Oct. 1983), at page 14.

7. ...but not Pennsylvania summary offences.

8. e.g. staff of the Pennsylvania Commission on Sentencing did indicate that if they had not had to consider misdemeanors as well, scarce resources for data collection and for developing guidelines could have instead been profitably used to conduct more in depth considerations of specific issues regarding the more serious felonies.

9. Of the over 16,000 felonies and gross misdemeanors shown in Figure 2.1 for Washington, roughly 27% were robberies and theft cases and roughly 16% were Burglary cases.

annually. Since Canada's general population is roughly 12 times that of Minnesota and even twice that of Pennsylvania, it would be safe to assume that the absolute levels of caseloads to be expected in Canada would be considerably above those in the sites visited.

In summary, given the differences in the likely volumes of cases that would be handled, the experiences of these other sites cannot be directly transferred to Canada. Particular caution is indicated regarding the costs and the technology found to be most appropriate (e.g. whether or not data entry and analysis could be handled by part-time staff and a microcomputer).

2.2.2. COURT STRUCTURE

The difficulties of designing and operating a sentencing guidelines information system will also depend on,

> "How many and what type of organizations make the decisions to be monitored?"

A Canadian information system will have to monitor the sentencing practices of a considerably larger number of organizations than in the states visited.

First, in each of the states visited, all or at least the vast majority of sentences to be considered are handed down in one level of court[10]. In Canada, separate data collection procedures would have to be developed consistent with the rules, procedures and available technological and administrative resources of each of over 24 court organisations -- at least two (and usually three) levels of criminal trial courts, in each of 10 provinces and 2 territories.

Second, in the states visited, responsibility for most functions related to court administration are centralized within one body, the court itself. For instance, in Minnesota, court administration is centralized within the Supreme court, and that court assigns judges, runs the information systems, and monitors and evaluates judges. The chief judges in the sites visited have considerably more power over administrative matters (including the development of court information systems) than do their counterparts in Canada. In contrast, a Canadian SGIS design must respect the division of powers and responsibilities between the Provincial Attornies General (e.g. administration of the courts, and prosecuting cases) and an independent Judiciary (e.g. adjudication and sentencing, and certain administrative matters).

Third, most of the criminal cases before the courts (and within the scope of sentencing guidelines) in the sites visited fall under state law. Canadian information system developers would have to allow for the division of responsibilities for collecting and reporting information that results from the Provinces' having responsibilities for the

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10. At this point appeals are not monitored in Pennsylvania. There are however plans to do so in the future.

administration of justice, but the Federal government's having responsibilities for the Criminal Code (part of which governs criminal procedure). In addition, in the sites visited the sentencing commissions were appointed and were situated at the same level of government as were the judiciary, the prosecutors and the central law enforcement agency[11]. However, in Canada the Sentencing Commission, the central law enforcement agency[12] and the judges of the higher courts are situated at the federal level, and all court-related agencies are situated within the provinces.

The complexity and costs of designing and operating an SGIS will also depend on,

> "How many individuals within each organization make the decisions to be monitored, and might require reports from the information system?"

The sites visited differ significantly from the Canadian situation on this dimension as well. Compared to the roughly 139 Superior Court judges in Washington State and the 270 to 280 active Common Pleas Justices in Pennsylvania[13], in the Provincial Court (Criminal Division) in Metropolitan Toronto alone in 1981 there were 53 full-time judges[14].

Finally, one should also ask,

> "Are there any major differences in court procedure which would make comparisons more valid or less valid?"

Only limited time was available for comparing the sites and Canada with regard to substantive rules and procedures. However, in direct contrast to the situation in Canada, in most of the sites visited fines were given in an insignificant proportion of offences[15]. Development of a Canadian SGIS would have to give significantly more attention to fines (and especially whether or not fines were defaulted and a custodial sentence was administered in lieu). Further, in each site those interviewed estimated that a large percentage of cases were disposed through plea

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11. In some states such as Washington, although information systems are developed and operated by a state agency (the Supreme Court), each local location pays a proportion of the costs, on a fee for service basis.

12 i.e. the Royal Canadian Mounted Police, the agency responsible for collecting national criminal justice statistics. The Canadian Centre for Justice Statistics is also located at the federal level.

13 Minnesota has 230 County and District Court judges.

14 the Annual Report of the Ontario Ministry of the Attorney General: 1980-1981) also notes that there were 147 Provincial Court (Criminal Division) judges in the Province of Ontario.

15 See for instance, Hann, R.G., (Oct. 1983), op cit.

bargains -- in Washington, over 80% of the cases. In fact, there is often a space on the formal sentencing guidelines data collection form for indicating that a case was disposed through a plea/charge negotiation. Although there are no reliable estimates of the frequency of pre-trial negotiations in Canada, it is likely that they are not as common -- and certainly not as formally sanctioned. It would be more difficult to explicitly recognize and accomodate the key role played by prosecutors in the processes leading to sentences in Canada.

2.2.3. PRISON STRUCTURE

Figure 2.2 displays major differences regarding the division of correctional responsibility between state and local institutions in each of the states visited, with the division of responsibilities in Pennsylvania being closer to that current in Canada.

FIGURE 2.2

JURISDICTION	JAILS	PRISONS
Washington	less than or equal to 1 year	over 1 year
Pennsylvania	COUNTY PRISONS all less than 2 years some between 2 & 5 years	STATE PRISONS usually between 2 & 5 years all over 5 years
Minnesota	WORKHOUSES up to 1 year	STATE PRISONS over 1 year

The division of responsibilities could have implications for defining the scope of sentencing guidelines. For instance, in Washington misdemeanor convictions were excluded from the guidelines partly to allay county fears that incarceration costs would be shifted from the state to the county. More generally, it was felt that it would be inappropriate for one level of government to set guidelines that would have a significant impact on the resources utilized by another level of government. Second, the way in which correctional responsibilities are divided also significantly affects the feasibility of estimating the impact of guidelines on state or county incarceration populations. In Pennsylvania for instance, the fact that for a significant percent of offenders sentenced to custody (i.e. those with sentences between 2 and 5 years) the level of institution in which the sentence will be served is indeterminate makes the task of forecasting the impact of any set of sentencing guidelines considerably more difficult. (Pennsylvania is the only state of the three visited that did not give forecasts of prison population impacts a central role in the guidelines development process.)

In Washington roughly 71% of the criminal cases tried in the Superior Court in 1983 were convicted and sentenced. Of those, 82% were sentenced to a combination of jail and probation, and 18% were sentenced to state institutions (i.e. over 1 year).

In Minnesota, of the roughly 6000 felony convictions per year, 50% were sentenced to jail as a condition of probation for stayed felony convictions, and 21% received prison sentences. As noted earlier, fines are not used very often by themselves, although they are often used as a condition of stayed sentences. There are on average 1300 admissions per year to state prison. These prisons have a population of around 2200, with an average time served of approximately 2 years. Probation officers in Minnesota work by and large for the executive Branch, under county boards and the corrections branch.

Roughly 4,000 defendants are admitted to state prisons in Pennsylvania every year. State and county adult probation and parole departments operate in parallel. A judge could ask either one to prepare the Presentence Inquiry (PSI) or to supervise a client. In Pennsylvania, for sentences with a maximum penalty equal to 2 years or over, eligibility for parole was at the minimum sentence (1/2 of maximum). Release was at the discretion of the Parole Board. Those with maximum sentences under 2 years could be released at any time at the discretion of the sentencing judge. Now the sentencing guidelines set the minimum sentence and eligibility. However, release is still at the discretion of the Parole Board.

2.2.4. LAW ENFORCEMENT STRUCTURE

In all three of the sites visited, there is a centralized law enforcement agency (the state patrol), with municipal forces in many of the urban areas. The main relevant point of similarity with Canada is that the central police forces, like the Royal Canadian Mounted Police, are responsible for maintaining the most comprehensive and automated data base on offender criminal histories in the jurisdictions.

2.2.5. SPECIAL ORGANIZATIONS

Most sentencing guidelines information systems are likely to require information that can only be obtained if a number of criminal justice agencies agree to work together to provide accurate and timely data. However, law enforcement, court and corrections agencies usually lack the traditions and organizational mechanisms for engaging in cooperative administrative initiatives. In assessing the likely organizational difficulties of developing a sentencing information system, it is therefore important to determine,

> "Whether or not any special organizational mechanisms exist to facilitate cooperation in developing information systems?"

In Washington State the existence of the Governor's Interagency Working Group (comprised of the heads of Corrections, the Parole Board, Corrections Standards, Crown Prosecutors, Prosecuting Attorneys, etc.) greatly facilitated the information systems development process. In Canada no such joint agency exists.

2.3. GEOGRAPHICAL CHARACTERISTICS

Even with advances in telecommunications technology, the difficulties and especially the costs of developing and maintaining an information system vary according to:

> "In how many physical locations must data collection or data reporting take place?"

In Washington state, courts were located in 39 counties and 29 districts. Pennsylvania has 67 courthouses in 60 counties. Minnesota has 87 counties, but only 10 districts. These figures are considerably lower than the analogous figures for Canada. For instance, in 1983 the Provincial courts (Criminal division) in Ontario alone held regular sittings in roughly 149 locations.

The answer to the related question,

> "Over what geographical area does the sentencing take place?"

is also important to determining the costs of systems developments, but more important to the probable development difficulties that can be traced to regional differences in objectives, attitudes and customs. Obviously the land area covered, and the potential for regional differences, is considerably greater in Canada than in any of the states considered.

2.4. GUIDELINES TIMETABLE

The final information considered in this chapter relates to the question:

> "After how long and at what point in time were efforts initiated to develop sentencing information systems?"

Figure 2.3 provides the context for the later discussion of this issue by summarizing the major milestones in the sentencing guidelines development process in the three states.

The enabling legislation for initiating both the Minnesota and Pennsylvania sentencing commissions was formally passed 3 years prior to that for Washington[16]. It is also important that in both Minnesota and Washington the passage from initial enabling legislation to the formal ratification of a set of sentencing guidelines was considerably smoother than in Pennsylvania. In the latter state the commission's first proposed set of guidelines was rejected by the legislature after a period of very heated debate. Nearly 4 years separated the date of the enabling

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16 In Minnesota, major interest in guidelines began in 1975 and continued for 3 years prior to the passage of legislation.

legislation and the date the guidelines were implemented. Compared to all of the states, and especially to Pennsylvania, Canada is clearly in the early stages of the guidelines development process.

FIGURE 2.3
SENTENCING GUIDELINES TIMETABLES

	JURISDICTION		
	Minnesota	Washington	Pennsylvania
Date Enabling Legislation Passed	1978	1981	1978
Date Commission Initiated	1980	fall, 1981	April, 1979
Date Guidelines Implemented	May, 1980	July, 1984	July, 1982*

*initial set of guidelines proposed and rejected in early 1981

2.5. SUMMARY

A major conclusion from the preceding discussion is that, on almost all of the structural dimensions considered, the three jurisdictions differ significantly from Canada . More importantly, it is likely that the differences point to the sentencing guidelines development process being even more complex and difficult in Canada.

CHAPTER 3.
GUIDELINES DEVELOPMENT PERIOD

3.1. INTRODUCTION

This Chapter focuses on the periods during which the Washington, Pennsylvania and Minnesota commissions were each developing sentencing guidelines. Section 2 describes information systems maintained by criminal justice agencies at that time, and Section 3 describes the political environment within which system development, and early data collection, took place. The special data collection efforts undertaken by the commissions themselves are then described in Section 4. The Chapter then concludes with a discussion of a number of more specific issues, including the requirements for particular types of information and the availability of that information.

3.2. EXISTING INFORMATION SYSTEMS

A major difficulty faced by almost every initiative in the criminal justice area -- and especially those concerned with sentencing -- is the lack of comprehensive, timely and accurate data. In Canada reasonably comprehensive data on sentences have not been collected on a regular and systematic basis since the early 1970's, and special investigations of the factors affecting sentences and the sentencing process have been extremely infrequent and narrow in scope.

A question often raised is,

> "Is it necessary to wait until after the development of systems to provide comprehensive, timely and accurate information on sentences and sentencing processes before beginning to develop and implement sentencing guidelines."

In Washington State, before 1981 the only detailed information available on sentencing practices came from a 1978 study by the Superior Court to support the development of voluntary sentencing guidelines. In general, if one wanted sentencing data, one had to go out and do a special study.

The information systems ongoing at that time exhibited serious shortcomings from the standpoint of those considering the development of

sentencing guidelines[17]:

- the Parole Board MIS had detailed data on many variables, but no data on probationers;

- the DOC Population File was the only historical file on probationers and prisoners, but covered very few variables (no sentences);

- the Jail Commission data were the only statewide source of jail information, but the data were not sufficiently detailed; and

- the Superior Court system (SCOMIS) included data concerning compliance with voluntary guidelines and did carry administrative information on all cases, but did not have sufficient information for the sentencing commission, and, since the system was voluntary, coverage was not as comprehensive as would be desired. As well, there were no ways of readily linking data from the Superior Court system to data from other court systems[18]. The Superior Court system was also "case" based, making it virtually impossible to derive information based on individual sentenced defendants -- the primary type of information required for sentencing analysis.

In addition, on initiation of a case[19], a fingerprint form was set up and sent to the Washington State Patrol (WSP) which was responsible for maintaining data on criminal histories. After case disposition, notification was also sent to the WSP, along with some summary sentencing information.

Full approval power over decisions regarding court information system developments rests with a committee with representatives from the judiciary, court clerks, court administrators, prosecutors, lawyers, and the general public. Originally organized along jurisdictional lines, the committee later adopted a functional committee structure (e.g. judges at all levels, administration at all levels, etc,.). This latter arrangement seems to have improved the decision-making processes

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17 State of Washington, Report of the Legislature, Sentencing Guidelines Commission (1983), page 30. It should also be noted that these systems have only recently entered a major redevelopment phase.

18 Four automated information systems were (since 1977) operational in the Washington Courts: the Appellate courts (ACCORDS), the Superior Courts (SCOMIS), the Juvenile Courts (JUVIS), and the District & Municipal courts. In addition, the Legislature has the Westlaw system.

19 The courts are notified of the charges which the prosecutors decide to proceed on. The courts do not get the original charges laid by the police.

regarding the definition of information requirements and system developments.

All Washington State court information systems have been developed "in house". A $9.3 million 2 year budget covered 54 people running systems, and all equipment costs.

When the Pennsylvania Commission on Sentencing was in the early stages of its guidelines development work (circa 1980), the Pennsylvania State Police were responsible for maintaining a non-computerized depository of criminal records for cases which either they had investigated or had been reported to them by other police forces. Only after 1980 were local police forces required to report to the State Police. "As a result, criminal information on many defendants is (was) incomplete"[20]. The district attorney's offices in each county represented a second source for records on prosecuted defendants. However, "the organization and completeness of these records vary (varied) considerably from county to county."[21]

With regard to court records in Pennsylvania, the "Docket Transcript Form" (DTF) information system was[22] maintained by the Administrative Office of Pennsylvania Courts (AOPC). The DTF system kept dispositional information on each initiated criminal case. However, the system still did not keep data on separate subsections of the state's criminal code. It was also felt that, "a few (courts) are (were) suspected of not submitting forms for all cases or of submitting inaccurate information"[23], and "no two Clerk of courts Offices operate in the same way (regarding procedures and quality of records)". On the other hand, the DTF system was available to see whether there had been changes in time delays or changes in charges.

Presentence Investigation reports (PSI's, or PSR's in Canada) are another potentially rich source of information for those investigating sentencing practices -- especially for information related to socio-economic and demographic data on the accused. In Pennsylvania, PSI's were completed and kept by either state and county probation officers. The state PSI's were collected together in a central registry and thus more efficiently accessible to the Sentencing Commission for data extraction. However, an analogous filing procedure was not routinely followed by the counties. In addition, "the records kept by county probation offices are (were) more varied than those of the clerks....the information available in a

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20 Kramer, J.H., R.L. Lubitz and J.P. McCloskey, Initial Draft, Pennsylvania Commission on Sentencing, Data Collection Report, (1980) page 4

21 ibid, age 4

22 ...and still is

23 ibid, age 3

PSI varied from extraordinarily complete, to only basic demographic data....some (counties) required them (PSI's) on nearly 100% of defendants, while in others they were ordered for fewer than 5% of the defendants"[24]. (It should be noted that PSI's were subsequently made mandatory for all sentencings.) Finally, the State prison agency in Pennsylvania maintained records on all of their inmates.

The question of who runs the information systems had been a major issue in Minnesota. Before the guidelines were developed, many of the responsibilities for criminal information were held by the state law enforcement agency (Bureau of Criminal Apprehension, BCA). At the time the Commission was beginning its work, the quality of data on court dispositions was especially bad. This situation in turn resulted in the information being provided by the police back to the courts being of similar quality and timeliness. Fortunately, after proposals during the late 1970's by the courts to assume more responsibilities for court information, it was agreed that the courts would assume responsibility for information on activities between the initiation of prosecution and the transfer of the case to corrections. Since the Supreme Court administration had legislative power to force clerks to submit data, the completeness of the data improved considerably. The introduction by the Supreme Court Administrative Office of a pre-numbered standardized complaint form also greatly increased the court's control over the paperwork -- and subsequently, the quality of the data.

In summary, when each of the Commissions were beginning their work, the state of police and court (and to a lesser extent, corrections) information systems was far from adequate -- situations which closely reassembled that faced by the Canadian Sentencing commission early in its work. However, since sentencing guidelines have been developed in each of the three states, the serious shortcomings in existing information systems were obviously not insurmountable. Much of the remainder of this report describes the initial data collection strategies used to overcome these difficulties.

3.3. ORGANIZATIONAL STRUCTURE, RESPONSIBILITIES & WORKLOADS

This section explores the extent to which another important type of resource was available,

> "What organizational structures and political support were available to assist the sentencing commissions?"

"Real" political support for the development of sentencing guidelines would translate into support for efforts to collect data to support that development. Gauging the extent of that support requires answers to a number of more specific questions, including,

> "Would the introduction of guidelines significantly alter the

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[24] ibid, age 5

type and amount of discretion exercised by different groups involved in the sentencing process?"

Although one often associates guidelines with reductions in discretion, and especially judicial discretion, such is not always the case. For instance, before sentencing guidelines were introduced in Washington, judges had total discretion over "jail" sentences (i.e. sentences under 1 year). The introduction of sentencing guidelines did limit that discretion considerably[25]. On the other hand, before the guidelines, judges in Washington had very little influence on "prison" sentences (i.e. sentences over 1 year). Judges usually gave the maximum as specified by law[26], but the actual time served was determined by the State Board of Prison Terms and Paroles. The guidelines did limit the custodial/non-custodial decision, but judges could select a sentence within the guideline ranges, and, since the parole board had no jurisdiction over sentences under the guidelines[27], the sentence they meted out became the "actual" sentence.[28]. In some ways therefore the introduction of sentencing guidelines could be seen as a significant decrease in discretion for the parole board, but a significant <u>increase</u> in discretion for the judiciary and the prosecutors.

In contrast, even though the Pennsylvania guidelines have been characterized as leaving relatively large amounts of discretion to the judiciary[29], the introduction of guidelines did in fact result in a <u>decrease</u> in judicial discretion.

The political support for the introduction of information systems to support guidelines would also depend on,

"Whether or not precedents existed for structuring court and sentencing discretion?"

Again there were significant differences among the three jurisdictions. As in Canada, both Pennsylvania and Minnesota had little prior experience with guidelines for court and sentencing decision-making. In contrast, Washington could benefit, not only from the previous experiences of

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25 ....although judges can still give "exceptional" sentences.

26 They could also specify a minimum.

27 The Board of Prisons Terms and Parole will be totally abolished in 1988.

28 Washington has however retained "good time" credit granted by the Department of Corrections.

29 because the guidelines have a number of alternative (mitigating and aggravating) grids, because the ranges of sentences allowed within each cell of the grid are fairly wide, and because the parole board has retained considerable discretion over the timing of release.

Pennsylvania and Minnesota, but also from the previous within-state experiences with guidelines of the Washington Association of Prosecuting Attorneys, the Superior Court Voluntary Sentencing Guidelines used by the Washington Association of Superior Court Judges, and the guidelines used by the Board of Prison Terms and Parole.

The difficulties of implementing sentencing guidelines information systems also depend on,

> "Whether or not different groups actively supported the sentencing guidelines development process?"

In Washington the commissioners themselves were especially supportive during the development period -- illustrated by their working an enormous amount of (their own) time setting sentence ranges for each offence. The legislature was also very supportive of the initial work of the commission since it had passed the legislation requiring the guidelines[30], and was also supportive when the sentencing ranges were submitted by the commission for ratification. In general there was a broad spectrum of support for guidelines: from the prosecutors (especially since they saw the guidelines as transferring power from the judges to the prosecutors), from the Superior Court Judges Association (not as strongly), from the Washington Council on Crime and Delinquency (since the guidelines were seen as emphasizing alternatives for non-violent offenders and fair treatment), and from Victim/Witness groups. Of particular importance was the active and strong support received from the high ranking Governor's Interagency Criminal Justice Work Group. Even the Board of Prison Terms and Parole (which had lost a considerable portion of its jurisdiction because of the guidelines legislation) now voluntarily uses the sentencing guidelines instead of their own guidelines which they had developed earlier[31]. On the other hand, as noted earlier, the counties (who feared the possibility of the guidelines shifting costs from the state prison system to the county jails) were more opposed[32]. There are also limits to the support given by various groups. For instance, the judiciary have insisted that the name of the sentencing judge not be made part of the automated record of each sentenced case.

The political environment in Pennsylvania was quite different. Again the willingness of the commissioners to play an intense active role was especially important during the early stages, and they too spent

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30 legislation which stipulated that there be two factors considered (i.e. severity and prior record) and how wide the ranges should be.

31 It is important to recognize that the board treats the sentencing guidelines as applying to typical, and not individual, cases. In the early stages of the commission, the board also lobbied for supervision to be retained.

32 This reaction is analogous to that of the Provinces in the context of the recent federal legislation regarding Young Offenders.

considerable amounts of their own time attending commission and subcommittee meetings. However, at the beginning even the sentencing commissioners were not committed to guidelines[33]. Probation officers were somewhat supportive, as were the academics and public defenders. However, initially the judges were opposed, arguing that the guidelines were not tough enough. Irrespective of its validity, the perception that the guidelines were too lenient was the commission's Achilles Heel. (It is important to note that the legislation to establish the commission was introduced as an alternative/compromise response to pressure to introduce mandatory sentences.) The District Attorneys went from neutral to hostile.

When specific recommendations and numbers were submitted by the commission, the opposition really solidified and increased, with the result that the commissions's first recommended set of guidelines was firmly rejected by the legislature. The set of guidelines that was finally accepted by the legislature had the formal support of a number of groups including: the police, MADD, the Association of Probation and Parole, and certain legislators[34].

In Minnesota initially, as in Washington, the Sentencing Commission seemed to enjoy the support of most groups. Of particular importance was the early support of the Chief Judge who, as noted earlier, has considerably broader authority over court administrative functions than do the chief judges of Canadian courts. The support of the judiciary was probably in part due to the Minnesota sentencing guidelines' elimination of the parole board[35]. The guidelines therefore reduced the discretion of the parole board, not that of the judges. (Unfortunately, Pennsylvania had no such "carrot" to offer judges, and therefore had much more difficulty in obtaining support from the judiciary.)

Next, it is also important to examine

> "Whether or not legislation was used to assist the commission in its data collection efforts."

In all three states, legislation was indeed utilized to facilitate the commissions' early efforts in the data collection/information development area. The legislation establishing the Pennsylvania commission empowered the commission to serve "as a clearinghouse and information center for the collection, preparation and dissemination of information on Commonwealth sentencing practices"[36]. In addition, by specifying that

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[33] although the staff were committed from the outset.

[34] including the legislator responsible for the motion to reject the first set of guidelines.

[35] Before the guidelines, the parole board could release a sentenced offender after one day in custody.

[36] ibid, page 1

the guidelines must be based on certain specific pieces of information (i.e. the seriousness of the offence, whether or not deadly weapons were involved, whether there were aggravating or mitigating circumstances, etc.), the enabling legislation at least implicitly sanctioned (or even required) the commission's collecting specific types of information. After the guidelines were implemented, legislation was used to ensure even more specific actions to assist the commissions' data collection efforts. For instance, in Pennsylvania and Washington, legislation specified that specific data collection forms[37] would be filled out by specific groups.

Finally, those interviewed were also asked,

> "Did the commission make significant use of data on sentencing practices to encourage support for the development of guidelines and/or of information systems to support the guidelines?"

Minnesota and Washington had relatively little need to engender more support during the early stages of their work. However, in Pennsylvania empirical data was productively used. For instance, to counteract criticisms of leniency the commission mailed to senators and representatives data demonstrating that sentences being recommended by the commission were not significantly more lenient than sentences being then given in counties in their constituencies. The actions taken by commissioners and staff also depended on

> "Whether the commission staff took a pro-active or passive role regarding the presentation and requesting of information?"

In Pennsylvania the role taken by staff seemed to change somewhat over time. During the commission's first efforts to get guidelines approved, empirical sentencing data were presented in a neutral fashion. Those interviewed suggested that in the beginning the staff were politically naive in leaving the politics to the commissioners and not anticipating political problems that were likely to happen. They also were not aware that the real reaction to the guidelines would not solidify until the guidelines were spelled out. During the second round, data was still presented in a factual and complete manner, but in a manner better suited to actively promoting the recommended guidelines. After guidelines implementation, in Pennsylvania accurate and timely information was one of the very few things the commission could offer to entice people to cooperate.

The staff of a commission can also strongly determine the specific types of data that will be requested and considered by the commissioners. In Minnesota staff strongly felt that the process of defining guidelines terms should ".....firmly establish(ed) the locus of decision making in the policy body (i.e. the commissioners) rather than in a technical

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37 the "Guidelines Sentence Form" in Pennsylvania.

staff."[38]. Nonetheless, the staff also strongly felt that they would be doing a disservice if they presented questions and information to their commissioners at inappropriate times and in an inappropriate manner. A case in point concerned the issue of whether or not the commission should consider (and therefore collect the data necessary to estimate) the impact of alternative sentencing guidelines on prison populations. The staff recognized that lawyers and judges, in their regular work, are accustomed to dealing with individual cases, and factual historical information on those cases. They rarely utilize empirical statistical information and are even less likely to rely on forecasts with a recognized element of uncertainty attached. If staff were to ask early in the guidelines process whether or not commissioners required empirical forecasts of the impacts of alternative sets of guidelines, the response would therefore likely be negative -- and commissioners would consequently also be unlikely to support the extra data collection efforts necessary to develop such forecasts[39]. However, if the question were posed later -- when the commissioners had a chance to understand better the need for such impact forecasts -- the answer would far more likely to be positive. Staff in Pennsylvania asked the question early, and forecasts of impacts were not undertaken. In Minnesota, the question was delayed until the commission saw the critical role to be played by impact forecasts -- and such forecasts (and the supporting data collection) became an integral part of the guidelines development process.

Commission staff can have a significant influence on the types of data collected and the types of information systems developed. The roles adopted by staff, or which evolve naturally, varied from one commission to another. Although responsibility for decision-making was certainly left up to the Commissioners in all three sites, the staff in Minnesota took a relatively proactive role (compared to, say, in Pennsylvania) in developing and presenting alternatives for the commissioners to consider. Different roles would also be appropriate to different situations and at different times. For instance, a more proactive role regarding the use of historical empirical information and forecasts of impacts might be more necessary in situations in which the Commissioners themselves had little experience with good quality empirical research.

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38 Knapp, K.A., D.L. Dailey and M. Helmes, The Impact of the Minnesota Sentencing Guidelines, Three Year Evaluation, Minnesota Sentencing Guidelines Commission, (1984), page 10

39 e.g. efforts to collect data from correctional records on time served before release, type of release, and whether supervision after release is revoked.

3.4. SENTENCING GUIDELINES INITIAL DATA COLLECTION: OVERVIEW

Clearly the data available in all three jurisdictions was far from adequate for understanding sentences and sentencing practices. This section addresses the questions,

> "Did the sentencing commissions feel that it was necessary to collect empirical data on sentencing practices early in the guidelines development process?",
>
> and if so,
>
> "How extensive were the initial data collection efforts?"

The answer to the first question is definitely "yes". The data collection efforts of all three commissions early in their mandate were quite extensive indeed, in most cases including multiple data elements from each of the categories[40] listed in Figure 3.1.

Initially, the Washington sentencing commission relied on specially collected data on 1900 cases, a 25% stratified random sample of all Department of Corrections Admissions files in fiscal year 1981. For pre-guidelines baseline data, this data base was later supplanted by data drawn from a similar sample of 2200 fiscal year 1982 admissions. The 379 variables in this 1982 sample covered most of the categories in Figure 3.1. The most significant categories of data elements not collected were those related to certain types of basic defendant characteristics (e.g. living/family status, education/employment, alcohol/drug use), the defendant's status on similar dimensions at the time of the offence, and the details of pre-trial negotiations, pleas, and appeals[41].

In Pennsylvania -- possibly because it was one of the earlier jurisdictions implementing guidelines -- the initial data collection efforts were more elaborate and consisted of a number of separate projects. The first, a survey of other jurisdictions, found that the number of variables on which data was collected in initial surveys varied from approximately 1,000 (in New Jersey) to 95 (in Philadelphia). The Law Enforcement Assistance Administration's (LEAA) "Multi-jurisdictional Sentencing Guidelines Program Test Design" recommended collection of between 40 and 50 variables.

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[40] Appendix A (available separately) provides a very detailed listing of the specific data collected in each site, both before and after the implementation of guidelines. Also described, for each data element, are: the different values allowed, whether the data was collected as part of a special survey or as part of an ongoing data collection effort, and whether the data came from a manual or automated information collection system. Finally, the appendix specifies whether each data element was collected for each case, each defendant, each count, each complaint, etc..

[41] All three jurisdictions collected little if any information on pre-trial detention and the administration of fines sentences (e.g. whether or not fines were defaulted).

FIGURE 3.1
CLASSIFICATION OF DATA ELEMENTS

BASIC CHARACTERISTICS OF DEFENDANT(S)
- Basic Demographic
- Living/Family Status
- Education/Employment
- Alcohol/Drug Use
- Psychiatric Problems

PRIOR CRIMINAL JUSTICE RECORD OF DEFENDANT(S)
- Criminal History (General)
- Prior Juvenile Record
- Prior Adult Offences
  - Prior Adult Misdemeanor Conviction
- Prior Adult Felony Conviction
- Prior Sentences as Served

SUMMARY INITIAL CHARACTERISTICS OF COMPLAINT OR CRIMINAL EVENT
- Timing of Offence/Arrest
- Defendant's Demographic Status During Offence
- Defendant's Employment/Occupation Status
- Defendant's Legal Status During Offense
- Defendant's Alcohol/Drug Status During Offence
- Defendant's General Attitude/Role Re: Offence
- Summary Legal Description of Key Offence(s)
- Offence Severity
- Weapon Use
- Victims/Harm/Damage Done

CHARACTERISTICS OF INDIVIDUAL COUNTS
- Legal Description Of Counts Charged/Disposed

PRE-TRIAL DETENTION

JUDICIAL INTERIM RELEASE HEARINGS

GENERAL COURT PROCESSING VARIABLES
- Basic Case Hearing ID
- Dates/Timing of Court Events
- Legal Representation
- Judge ID
- General Court Activity

PLEA NEGOTIATION

TRIAL
- Plea
- Conviction Process

FIGURE 3.1 (continued)

VERDICT DESCRIPTION
- Timing of Verdict
- Other Adjudications
- Conviction Offences
- Status of Defendant at Verdict
- Verdict

PRESENTENCE REPORTS
- Recommendation by PSR/PSI Writer

CALCULATIONS FOR PRESUMPTIVE SENTENCES
- Prior Criminal History: Summary
- Legal Mandatory Terms
- Current Offence Severity: Summary
- Calculations

SENTENCE/SENTENCING CHARACTERISTICS
- Court Location
- Sentencing Judge
- Timing
- Status of Defendant at Sentencing
- Offences Dealt With
- Sentencing Reasons
- Type of Sentence
- Imposition of Sentence
- Custodial (Prison) Sentence
- Probation Sentence
- Jail Sentences
- Community Supervision
- Fines
- Treatment Program
- Residential Treatment
- Restitution
- Costs
- Monetary Obligations
- Additional Conditions

SENTENCE COMPARISON: ACTUAL VS PRESUMPTIVE
- Comparison Of Actual Sentence to Guidelines
- Independent (i.e. coder's) Assessment Of Sentence

APPEALS

CUSTODIAL SENTENCE AS SERVED

FINE SENTENCES AS ADMINISTERED

PROBATION SENTENCES AS SERVED

MISCELLANEOUS PROJECT ADMINISTRATIVE DATA

The second project, a questionnaire survey of all Judges, law school professors, and others gave the commission an indication of opinion across the state. Three alternative approaches to guidelines were described, and the respondents were asked to rank (1-10) a number of listed factors according to their relevance to sentencing. Third, the commission collected baseline data while (i.e. not before) the commission was developing guidelines. About 100 core variables were identified, and site visits were made to clerks of court, probation and court administration officials and District Attorneys in 19 counties to ascertain the likely reliability of data collected on each variable. After these site visits, the commission staff decided to rely on Clerk and Probation data. Those data did not provide totally reliable descriptions of the "true' nature of the offence, defendant, etc.. However, they were adequate since the commission was primarily interested in the information that had been available to the sentencing judge. Data stored in local offices was utilized since there was no adequately complete centralized data bank for criminal case records. However, "rap" sheets were obtained from the state police when they were missing from local files.

Data on variables within many of the categories in Figure 3.1 were collected for a 14% sample of all sentences from one year. The full year sample avoided seasonal variations. The final sample size of 2907 cases (plus a special subsample of Driving While Impaired [DWI] cases) was to a large extent determined by the available budget and the fixed (by statute) timetable. In large part for political and public relations reasons, the sample was drawn from all counties. Twelve data collectors each spent a period of from 12 to 16 weeks in the field collecting data[42].

The reports of the commission describe the data collection in detail, and with a candour often missing from such reports[43]. Especially emphasized is the importance of committment to the job and personality in choosing data collectors (even though training of people without criminal justice experience was more costly). The reports also stress that the data collectors will become perhaps the only representatives of the sentencing commission that people in the field will ever meet. Opinions of the commission (and later willingness to assist the commission in subsequent data collection work) will therefore be largely determined by the impressions they make. The problems encountered by the Pennsylvania data collection effort were typical of problems frequently encountered in empirical research. For instance:

1 the most recent year of usable data (in 1979-1980) was for 1977,
2 the collectors needed to sample 28% of the population of cases to

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[42] the commission used an estimate of 1 hour per case for travel, searching and coding.

[43] See especially, Kramer, J., R. Lubitz and J. McCloskey, "Data Collection Report", Pennsylvania Commission on Sentencing, (May, 1980)

allow sufficient replacements (for bad or missing data) to get a final sample of 14%,

3 during the population enumeration stage, the sample selection tape was found to have collapsed offences so that the commission could not sample by individual offense categories as had originally been planned, and

4 the different local procedures that existed for numbering cases affected the accuracy of the original file selection. (This resulted in another method having to be used for one (major) location.)

In summary, as with many empirical data collection efforts,

> "In retrospect we (the commission) underestimated the complexity of on-site organization and coordination of data collection activities in a few of the largest counties."[44]

Finally, to estimate the impact of guidelines on sentencing practices in selected politically important counties, the Pennsylvania commission collected data from a second sample of 2023 cases (convicted in 1980 of felonies and misdemeanor 1's against the person -- e.g. aggravated assault, burglary, rape, and robbery). Data was drawn from clerk of the court and state police records and included:

- offenses convicted, sentences imposed, defendant's prior record, weapon usage, defendant's sex, race, and age.

In Minnesota, the commission developed its severity ranking of offences by July of 1979 and began its first major special data collection effort in August. Two samples were drawn: a 50% sample of felony offenders (2,332 cases) sentenced in District Court during the period July 1977 through June 1978, and a sample of all releases from prison (the latter to get information on time served).

The court data was drawn from Presentence Investigations prepared by Probation Officers[45] and from court files (e.g. transcripts) in each county. The initial data collection in Minnesota was one of the more comprehensive of those undertaken by the sites visited. Data elements were collected in virtually every category shown in Figure 3.1, including;

> "alleged offense behavior, victimization, conviction offense, criminal history, offender characteristics, case processing and plea negotiations.."[46]

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[44] ibid, page 16

[45] Although PSI's were supposed to have been done on all felony convictions, they were not done in some cases.

[46] Minnesota Sentencing Guidelines Commission, The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation, (Sept. 1984), page 20

Minnesota also subsequently compiled a number of special "in-depth" data bases similar to the baseline data[47]. The commission could therefore trace developments over time in a far greater number of areas than could others using either the ongoing information systems developed in Minnesota or those in the other states[48].

In summary, each of the three jurisdictions conducted early special data collection efforts of major proportions. Even the provincial automated court information systems existing in Canada could not match the scope of those data collection efforts in terms of data elements collected -- especially those describing offender characteristics and the characteristics of the offence. In fact, even the few special studies of court sentencing practices that have been undertaken in the recent decade (each for a very limited number of Canadian courts) usually do not match the studies just described in terms of the scope of data collected.

3.5. SPECIFIC INFORMATION REQUIREMENTS & AVAILABILITY

3.5.1. INTRODUCTION

The following subsections will each address a specific issue related to the early data collection efforts just described.

3.5.2. THE TYPE OF SENTENCING GUIDELINES

"Does the type and scope of empirical data required to develop guidelines depend on the type of approach taken to developing sentencing guidelines?"

If it is decided to develop guidelines that will result in future sentencing decisions similar to past sentencing decisions, then one needs to have detailed empirical data to develop an understanding of past sentencing decisions and the impact on those decisions of factors such as the characteristics of the offender, offence, court, legislation, etc..

However, none of the 3 jurisdictions adopted such an approach. The alternative proscriptive or normative approach chosen gave considerably less weight to past sentencing behaviour and more weight to the objectives and purposes of sentencing. Consequently, detailed data on past sentencing practices was of less use in developing such guidelines.

However, this does not mean that detailed historical sentencing data are not required to support normative-based guidelines -- before, during and

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47 These "in-depth" studies are discussed later in the next chapter.

48 The Commission also sampled 400 cases from the 88 counties and collected data identical to that collected for the later "in-depth studies".

after the development period. As mentioned earlier, Pennsylvania used historical sentencing data to counter criticisms that the guidelines they recommended were too lenient. Further, historical data would also be useful in anticipating the extent and type of any likely response to different types of guidelines. At a minimum, a commission should prepare itself beforehand with knowledge of whether the guidelines it was about to propose represented minor or major deviations from recent practices. Similarly, empirical evidence that current practices were unfair or disparate would be useful to support the case that the whole guidelines development process was necessary.

In any case, a commission does need to have data on how past sentences have varied by offender characteristics for purposes of accountability. It must be able to demonstrate whether or not sentences are more or less affected by such characteristics after the guidelines have been introduced.

Thus, if a normative approach is taken, collection of data on historical practices could be delayed until after the guidelines have been developed. However, if the data were going to be collected anyway, it would make sense to have it available early so that it could support the development process as well.

Finally, one should distinguish between detailed empirical data and the sophisticated statistical analysis of that data necessary to identify the separate and independent influence of different factors on sentences. It is certainly unlikely that such a statistically complex analysis would be required for purposes of developing guidelines using a normative approach[49]

3.5.3. IMPACT ON CARCERAL POPULATIONS

"Does the guidelines development process require that the commission take into consideration the impact of the guidelines on custodial populations?"

Irrespective of the type of guidelines in place, if the commission must estimate the impact of alternative sentencing guidelines on institutional populations, then they must have the empirical information to do so -- information that would (at a minimum) include data on the sentences and probable release dates of offenders now in custodial institutions, trends in the characteristics of offenders who have been given prison sentences in the past, the lengths of past custodial sentences, and the time typically served for offenders given different lengths of sentences.

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[49] In Pennsylvania, the staff of the commission made the wrong guess regarding whether the Commission would do descriptive or proscriptive guidelines. The staff did therefore do some multiple regressions regarding the factors "statistically explaining" the in/out decision and the length of sentence. The results were presented to, but not used by, the commission.

In Washington State the 1981 enabling legislation

> "requires the commission to estimate the population consequences of the recommended guidelines for prisons and jails..."[50]

Not only did the Washington commission have to estimate the impact of its guidelines on prison populations, the legislature further specified that "should the commission's recommended sentence ranges exceed capacity, the commission must submit a second set of sentence ranges that are within capacity." That commission relied on forecasting models based on those developed by the Office of Financial Management to support the work of the Governor's Interagency Work Group.

Such forecasts required data to estimate how many persons would, in the future, fall into each category of the sentencing grid. Unfortunately, the data that existed on non-prison sentences (75% of convictions) were not sufficiently detailed, the existing data was not organized by the commission's rules or categories, and translation was difficult and unreliable. "Since existing criminal justice data were not adequate for this purpose, the commission staff collected pertinent data on fiscal year 1981 admissions to the Department of corrections."[51]. This special data covered 1900 cases, approximately 25% of the admissions[52] to probation or prison (excluding admissions for parole revocation). This sample was selected using a stratified random sampling plan which weighted for the original offence seriousness levels. In addition, data was collected for 100 parole revocations. The data on probationers was collected by questionnaires to probation officers. The data on admissions to prison were extracted by researchers from parole board files[53]. Data was collected on: identifiers/demographics, current offenses, prior adult offences, prior juvenile offences, and aggravating circumstances.

In 1983 the legislature went even further and

> "...raised concerns about the effects of the new sentencing system on jail populations. The Commission was directed to study the effects of the guidelines on a representative sample of counties as well as to assess the availability of alternatives to

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50 State of Washington, Sentencing Guidelines Commission (1983), op cit, page iv.

51 ibid, page iv. 1981 was the most recent year for which data was available at the time

52 Adult court convictions were not reliably and comprehensively tracked on any statewide system. It was therefore necessary to use data on admissions.

53 10% of data coding was repeated by an independent data collector

incarceration[54].

For this later exercise, data on 3000 cases from 18 counties were selected -- from all fiscal 1982 admissions in the smaller counties, and from a representative sample in the larger counties[55]. Data collectors then went to the local jails to get data on the periods of confinement and credit granted, to get estimates of the actual time spent in jail.

Although "numerous assumptions were necessary about the future behavior of participants in the criminal justice system"[56], the forecasts were found to be very useful in the decision-making processes of both the commission and the Governor's Interagency Working Group.

Conversely, in Pennsylvania there had been no explicit requirement to have guidelines take into account any impacts on prison populations. This was partly because the guidelines were to a large degree a response to a threat of mandatory sentencing legislation -- the state being disenchanted with lenient sentencing practices and a great deal of regional (and especially urban vs. rural) disparity. Secondly, incarceration was felt to be dependent on many variables other than sentencing practices.

In addition, to be able to predict correctional impacts, sentences must be predictable. Sentences in Minnesota were predictable, partly because sentencing ranges under the guidelines were fairly narrow. However, in Pennsylvania the judges on the commission were concerned that although there might be a need to structure discretion, it was not necessary to curtail it overly. The commission had always been uncomfortable with the notion that what was needed was close conformity and narrow ranges. Instead it was felt that departures could be frequent -- it was only important that they be documented and rationalized. As well, it was felt that guidelines couldn't encompass the complexity of the sentencing process, and that attempts to simplify overly that complexity would result in mistakes being made in the guidelines[57]. The result was guidelines that specified very broad ranges of sentences available to judges and the predictability of custodial populations suffered accordingly.
Finally, in Pennsylvania sentences of 2 to 5 years can be served in

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54 State of Washington, Report to the Legislature, Sentencing Guidelines Commission, Olympia, Washington, (1984), page 1.

55 The DOC computerized data base of persons admitted to prison or probation (jail) was used to select the sample. However, a check with county prosecutor files showed this data base on admissions was not exhaustive.

56 ibid, page 8

57 Conversely, it was also felt that if the guidelines were made overly complex, they would not by used.

either a county or a state institution. In one of the largest counties, sentences of 6 months or more go to the state. Again, the ability to predict either county jail or state prison populations is made more difficult.

In light of the above, it is not surprising that during guidelines creation the Pennsylvania Commission on Sentencing did not attempt custodial population projections. The closest the commission came was to look at the likely impact of alternative sentence lengths and in/out decisions on the total months sentenced. The existing guidelines were applied retroactively to existing data assuming 100% conformity to the median guidelines sentences. The results were simply laid out, and, even though the estimate was for a 61% increase overall, the guidelines were still labelled "lenient".

In Minnesota the situation was much closer to that in Washington.

> "The legislation required that the.....Commission take ....available correctional resources into substantial consideration in drafting the guidelines."[58]

The Minnesota commission used information from the forecasting model constantly during guidelines development. For instance, when the commissioners were choosing the dispositional line for the sentencing grid, the staff would put one alternative option forward and would always include an estimate of the prison population impact of that option. This process was repeated once a week during the intensive period of guidelines development. All concerned understood the limitations of any forecasting model, but the forecasts are still seen as being a necessary and valuable part of the guidelines development process.

3.5.4. GENERAL QUALITY OF DATA

> "Should the development of guidelines be delayed until one has accurate and timely information on sentencing practices?"

Each of the jurisdictions would have been able to improve the accuracy, timeliness, or scope of their special data collection efforts. However, it is important to realize that different types of decisions require information of different quality. In particular, many of the broad policy and strategic decisions that have to be made initially by a commission do not require precisely accurate and totally comprehensive information. For a normative approach to guideline development, it is often quite adequate to have information that describes more general types of phenomena: e.g. general historical trends in sentencing practices, general current practices, and general levels of impacts. In addition, such information usually has only to be "within the ball park" as opposed to being precisely accurate. Finally, especially during periods in which no major changes have occurred, data that describes the

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58 Minnesota Sentencing Guidelines Commission (Sept. 1984), op cit, page 6.

moderately recent past may be an adequate substitute for absolutely current data[59].

None of the commission staffs felt that major mistakes had been made that were attributable to lack of sufficiently accurate and precise data. Rather than advising delays for better data, they were more likely to point out that sentencing guidelines systems often act as a catalyst for improving existing information systems. For instance, a guidelines requirement that sentences be based in part on the prior criminal record of a convicted offender was an effective incentive for law enforcement, prosecution, and court officials to work together to improve the scope, timeliness and accuracy of information systems to provide such information.

Although the above comments generally apply, it is important to note that exceptions to the rule will occur. For instance, in Pennsylvania the timeliness of the 1977 baseline data was a problem since sentences had increased between then and 1979/1980 when the commission was (informally) attempting to estimate the impact of guidelines. The result was that the impact of the guidelines was significantly over-estimated (i.e. 60% versus 20%).

3.5.5. OFFENCE TYPE

"How specific does the data collected have to be in describing the part of the statute violated?"

The legal definition of the criminal event can be captured with various levels of specificity. Offences or cases can be described in terms of the general part of the Code violated, in terms of the specific section violated, ..., or in terms of the specific section, subsection, subsubsection and paragraph violated.

All the jurisdictions visited emphasized that one should code the legal description of offences in as fine a level of detail as possible. Pennsylvania especially would have liked their earlier baseline data to have been collected according to a finer breakdown of offences.

3.5.6. SCOPE OF COVERAGE

Chapter 2 began discussion of the question,

"For what types of offences should baseline data be collected?"

Washington and Minnesota collected data only for cases convicted of felonies. Pennsylvania collected data for both felonies and misdemeanors. The principle of maintaining proportionality in sentences (also discussed earlier) seemed to be leading Washington and Minnesota

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59 On the other hand, for later decisions, especially those related to monitoring and evaluation, one may require data of considerably more accuracy and completeness.

towards at least considering expanding the scope of guidelines and therefore data collection to support the guidelines. In Washington there is a bill before the legislature to extend guidelines to cover misdemeanors. It is believed that if the bill doesn't pass, the commission will at least be requested to undertake further study of the issue[60].

On the other hand, in Pennsylvania the earlier data collection efforts would have been considerably easier if the scope had been restricted to felonies, and it would have been advantageous to have used scarce resources to develop more comprehensive baseline data for (more) felonies. Further, it is likely that there would have been far fewer difficulties in collecting prior (felony and misdemeanor) records for felony convictions. Finally, felonies were the primary concern of the legislature and the state prisons.

3.5.7. OFFENCE SEVERITY

In their baseline data collection efforts, certain of the jurisdictions did not collect sufficiently detailed data on prior offences to allow one to calculate the offence severity -- offence severity as eventually defined and required to calculate presumptive sentences under the sentencing guidelines that were to be implemented. Although the data were not essential to their latter work, staff in Pennsylvania would have liked to have had the gravity of prior offences.

It is, however, relevant that none of the states used any of the empirical data collected to assist their commissions in assigning severity rankings to different offences. Instead, normative judgements were seen as more appropriate. In particular, past sentences given for different offences were not seen as useful proxies for offence severity, since the sentence outcome had, in the past, been dependent on too many factors other than offence severity (and perhaps prior record).

3.5.8. PRIOR RECORD

> "Is it necessary to collect data on prior record for cases in the baseline data base?"

Data on the prior records of cases was considered essential by each of the three jurisdictions -- especially since prior record was one of the two main dimensions of the sentencing grids that were developed. There were, however, major problems encountered in each jurisdiction regarding obtaining the "real" prior record of offenders (problems which often

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60 As noted earlier the issue is closely connected to a number of county/state political considerations. Some feel that, since the Counties manage the jails, it would not be appropriate for the state to set guidelines that would impact on county resources -- unless the state were to take over the jails as well.

still persist and are therefore discussed further in the next chapter). For instance, in Washington one of the major reasons for not scoring prior misdemeanors was that the "court records for misdemeanors are very unreliable"[61]. In Pennsylvania, the state police were the only source of prior record information, but there was a serious problem with completeness of their data.

3.5.9. PROSECUTORIAL CHARGING PRACTICES

"Was data on prosecutorial pre-trial charge/plea/sentence negotiations collected?"

None of the jurisdictions collected "baseline" data regarding prosecutorial/defence pretrial negotiations.

3.5.10. COURT CASE PROCESSING

"Was data on the way in which the cases were processed in court collected for cases in the baseline data sample?"

Factors related to court processing were not considered admissable for consideration under the guidelines systems that were developed. However, it is surprising that such data were not collected (in any jurisdiction) for purposes of monitoring changes that might have resulted from the guidelines -- changes related, for instance, to: existence and duration of pre-trial detention, number of court appearances, differences between initial charges laid and charges proceeded with in court, time between first and last court appearance, type of plea, etc..

3.5.11. SENTENCES

"Was data on past sentence lengths used to develop presumptive sentence types and lengths?"

Because of the normative approach adopted, historical sentencing practices were of less <u>direct</u> relevance to the guidelines development process <u>per se</u>.

However, data on past sentences played an <u>indirect</u> role in all jurisdictions. In Minnesota and Washington, data on historical sentences (and sentences as served[62]) were most useful in estimating the contribution to future custodial populations that would be made by offenders already sentenced -- to assist in the estimation of the impact of alternative sets of guidelines. In Pennsylvania, the data on past

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61 State of Washington, Sentencing Guidelines Commission, (1983), page 12.

62 In Washington initially staff couldn't give the commissioners jail sentences (but they could give reasonable guesses as to the time served in prison using parole guidelines).

sentences served a special purpose, since a clearly defined goal of the sentencing guidelines was to increase the severity of sentences in the 2 large urban areas and to reduce the severity of sentences in other areas of the state. In Pennsylvania therefore, after the commission had ranked crimes according to severity and had established preliminary grids, the 1977 data was used at different stages to show actual "in/out" proportions for each cell in the grid, and then to give mean and median historical sentences in each cell. (The in/out data was found to be more useful, since the sentence length data "jumped all over the place".)

3.5.12. OTHER VARIABLES

Given the wide range of baseline data collected, it is not surprising that none of the jurisdictions could identify many variables which they would in retrospect have added to the list of variables collected.

The Washington commission was, for a while, considering a variable grid guidelines system -- that is, defining a third dimension in terms of factors other than prior record and offence severity. Depending on the specific dimensions chosen, that choice might have required the collection of additional data. However, that type of grid was seen as being too complicated and was dropped[63].

In Pennsylvania the commission's enabling legislation specifically noted that the guidelines should consider, in addition to prior record and offence severity, factors such as: rehabilitation, deterrence, and incapacitation. Nonetheless, commission staff felt that requests for more data from the commission in the early stages would have bogged down the data collection effort. Further, if data collection had begun 6 months later, there would have been cut backs in some areas, in particular the (difficult to obtain) socio-economic data which was not used in developing guidelines. On the other hand, earlier on the staff would have wanted better data on the time delays for different criminal careers and in particular data on time served to allow the estimation of the time offenders were in the community at risk.

3.5.13. ALTERNATIVE PROGRAMS AVAILABLE

> "Was data collected on the resources available to support alternative types of sentences?"

Despite the ostensible importance of considering the extent to which public and private resources existed in the community to administer different types of sentences, only in Washington was such information collected. Even there the commission only began the work that was really needed.

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63 although Washington did retain aggravating and mitigating factors.

3.5.14. SELF-MONITORING

As noted earlier, monitoring and evaluating the impact of all types of guidelines requires baseline data on a fairly wide range of variables.

3.5.15. PROCESS FOR IDENTIFYING INFORMATION REQUIREMENTS

Given the importance of having the right types of baseline data, the data collection efforts must be carefully planned. We therefore asked each commission,

> "What special procedures were utilized to identify specific data elements that should be collected?"

None of the jurisdictions did a formal survey of different groups in the jurisdiction to identify the issues that must be addressed and the data required to address those issues[64]. Instead, the commissions usually placed considerable reliance on the knowledge and ability of commission staff members to identify variables that should be collected. Those lists of variables were, however, usually presented to the commissioners (and in some cases to other outside experts) for ratification. Presumably the members of the commission would ensure that the views of their respective "parent" constituencies would be represented.

3.5.16. RESOURCES AVAILABLE AND UTILIZED

> "How large a permanent staff was associated with the commissions?"

In each jurisdiction a surprisingly small number of permanent staff accomplished a large amount of work. Virtually all of the design and planning and supervision of the implementation of the initial data collection efforts, and the analysis of the data collected, was accomplished by commission staff. In addition, staff turnover has been almost non-existent.

During the initial stages, the staff of the Washington commission consisted of 4 permanent employees. By 1985 the number had increased to 4.5. Under $100,000 was required for the initial data collection[65].

In Pennsylvania the staff initially numbered 3 professionals and a secretary. These initial 3 staff members were still with the Commission since 1979. Part-time staff were hired for original data collection. Over the years the commission has increased the staff but decreased the operating budget. The commission's total budget was initially $200,000 per year.

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64 although Pennsylvania did a related survey assessing the reaction to alternative types of guidelines and factors that should be considered.

65 The parole board in Washington State spent nearly $3 million to develop Parole Guidelines.

The Minnesota sentencing commission staff currently consists of 3 permanent full time members.

3.6. SUMMARY OF MAJOR FINDINGS

This Chapter begins by describing the current state of information systems maintained by law enforcement, court and corrections agencies at the time the sentencing guidelines commissions in the three jurisdictions began to develop guidelines. At that time police and court (and to a lesser extent, corrections) information systems were far from adequate. The existing situations closely resembled those faced by the Canadian Sentencing Commission during the early stage of its work. However, since sentencing guidelines have been developed in each of the three states, it is obvious that the serious shortcomings in existing information systems were not seen as an insurmountable obstacle.

Section 3 then explored another key resource that could be utilized by guidelines commissions, the support of other groups in the criminal justice system. There were often considerable differences among the jurisdictions visited in terms of: whether the introduction of guidelines had an impact on the extent to which different groups could exercise discretion over matters related to sentencing; whether the guidelines were the first attempts in the jurisdiction to structure discretion or whether precedents already existed; whether the commissions had the active support of different groups; and the use made by the commissions of data on sentencing practices to promote the support of different groups. All of these matters would be expected to have an impact on the effectiveness, design and feasibility of initial data collection efforts.

The sentencing commissions in all three of the jurisdictions had to undertake special "baseline" data collection efforts soon after their formation. Those data collection efforts were of major proportions compared to either the provincial automated court information systems existing in Canada at present or to any special studies of court sentencing practices that have been undertaken in the past decade.

Section 5 completes the Chapter by exploring the experience of each of the three jurisdictions with respect to a number of more specific issues related to the early data collection efforts -- issues ranging from the type of sentencing guidelines, and their impact on carceral populations, to alternative programs available, self-monitoring, and the process for identifying information requirements.

The material provided in Section 5 adds considerably to the descriptions of the earlier data collection efforts -- and points out certain promising directions for (and pitfalls to be avoided by) a similar effort should it be undertaken in Canada. Perhaps the most important point made is that an initial data collection effort of quite substantial proportions is regarded as a necessary task of any sentencing guidelines commission. Finally, the need to undertake an initial data collection

effort is considerably stronger if estimates of the impacts alternative sets of guidelines will have on carceral populations should be considered during the development of guidelines. The experience of all three jurisdictions is strongly supportive of taking such estimated impacts into account.

CHAPTER 4.
MONITORING & ONGOING DECISION-MAKING

4.1. INTRODUCTION

This Chapter first explores whether or not the 3 jurisdictions experienced any major changes to the ongoing information systems maintained by other criminal justice agencies since the implementation of the sentencing guidelines. Sections 2 and 3 describe those systems, and the systems developed in each state to support the specific information requirements of the sentencing guidelines commissions. Section 4 explores a number of more specific aspects and issues related to the systems themselves and to the process through which they were developed, operated and improved. The major implications of this analysis are itemized in Section 5.

4.2. OVERVIEW OF POLICE, COURT AND CORRECTIONS SYSTEMS

Mainly because of shortcomings in the existing systems for providing criminal histories data to support activities related to sentencing guidelines[66], Washington State recently initiated a major redevelopment of the state's criminal justice information systems. The redevelopment was formally initiated when the Governor's Interagency Criminal Justice Working Group set up a special Technical Advisory Group consisting of the lead data processing and information system personnel from the different agencies that comprised the criminal justice system in the state "when they recognized how serious the need was for improved criminal justice data. A central reason given for the poor state of criminal histories data was the fact that the traditional legal independence of the different criminal justice agencies had been extended too far into the information sphere.

> "The current information systems reflect this legal operational independence,) thereby ignoring the requirement for informational interdependence)[67]."

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[66] ...activities ranging from the calculation of presumptive sentences by the prosecutors to the estimation of the guidelines on prison populations.

[67] ibid, page 2

The Criminal Justice Information Act of 1984 symbolizes the commitment of the State to ensuring that developments in the information area would proceed. The plan embodied in the Act clearly allocates specific responsibilities for criminal records information system-related tasks to the Washington State Patrol, the Department of Corrections, and the Corrections Standards Board[68]. When the new system is implemented, the prosecutors will have primary responsibility for submitting data on charges and dispositions to the State Patrol which in turn will maintain criminal histories in an on-line system. The Department of Corrections has recently implemented an offender-based tracking system[69]. What is somewhat surprising is that the court administration plays such a minor role in this system whose main aim is to provide data to support sentencing[70].

The recent information system development plans for Washington specifically rejected the concept of locating a system-wide computer in a single agency

> "...no state has successfully initiated a central computer system for the criminal justice system.....High costs related to the maintenance of a separate agency for the central computer is one major problem. Also, because criminal justice agencies do not use the central agency as their operational data base, reporting of data to the system is problematic.....Provisions in the United states and state constitutions ensure operational independence between criminal justice agencies....(and) separate responsibilities require vast amounts of detailed information that is unnecessary for other agencies' operations and is inappropriate for a criminal justice computer"[71]

No post-guidelines related changes have been made to ongoing information systems of criminal justice agencies in Pennsylvania. The Docket Transcript Form (DTF), the charge specific form on which charges are laid[72], remains the cornerstone of the court information system. In

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68 Washington State Office of Financial Management, "Criminal Justice Information Act of 1984", (Dec. 1984), page 3,17

69 An OBTS based on the system operational in Florida.

70 One reason given for this situation is the inability of the courts to positively identify offenders for purposes of updating prior record information -- because the courts do not have the mandate or the facilities for establishing proper identification of offenders through fingerprinting.

71 Washington State Office of Financial Management, op cit, page 2 and 3.

72 the form is analogous to a Canadian "Information".

addition, the Judge also routinely fills out a Sentencing Order and a Warrant of Committal in the case of a correctional sentence.

In contrast, major developments in the information systems area did take place in the courts in Minnesota coincident with the inception of the sentencing guidelines commission. Criminal histories are still maintained by the state law enforcement agency, and all court information on dispositions goes to that agency.

The court Minnesota State Justice Information System (MSJIS) has 3 forms: a complaint, a transaction report, and a final disposition report[73]. The complaint contains the initial charges and is filled out by the secretaries or clerks of the county attorneys who forward it to the court clerk's office. The transaction report is a progress report on developments in the case at each hearing, or on changes in the status of the case occurring due to some out-of-court activity. A special type of "sentencing hearing" code was added to help the sentencing commission, but its usefulness has been limited because court clerks were insufficiently trained in its use. (Generally sentencing in Minnesota takes place at a separate hearing.) The disposition form is intended to meet the combined information requirements of the BCA (Bureau of Criminal Apprehension) and the sentencing commission. After disposition, the BCA uses the data to update their criminal history file.

The combined hardware lease and software cost for the (civil and criminal) MSJIS is roughly .5 million dollars a year and 31 people are required to operate the system.

Finally, the state corrections agency has an expensive automated system which, unfortunately, does not link easily with other justice systems in the state. For instance, the corrections system uses different case/defendant identifiers than are used by the state law enforcement and court systems.

4.3. OVERVIEW OF THE SENTENCING GUIDELINES INFORMATION SYSTEMS

The following general descriptions[74] of information systems set up to satisfy the specific and special needs of the 3 sentencing guidelines commissions focus on the following questions:

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73 Some counties have implemented an on-line Trial Court Information System (TCIF) which provides all the information required by the MSJIS.

74 The reader requiring a detailed description of the specific data collected by each of the ongoing sentencing information systems is referred to the separately bound appendices to this report.

"Were the existing criminal justice information systems capable of providing the types of information required to support sentencing guidelines?"

"If additional information was needed, was it obtained by adding on to or modifying existing criminal justice information systems, or by building new and separate systems?", and

"What types of special hardware and software were used to operate the sentencing guidelines information systems?

In Washington the existing criminal justice information systems were not capable of supporting the information requirements of those involved in the operation of sentencing guidelines. Special assembly and collection of data for the guidelines information system was based on two major data recording forms: the "Offense Scoring Form" and the "Judgement and Sentence Form".

Different "Offense Scoring Forms" have been developed for each of a number of specific offences or groups of offences. These forms, or their equivalents[75], were filled out by the prosecutors or their clerks. Each of the forms gave the sentencing options and ranges for the offence. The Offense Scoring Forms were not sent to the sentencing commission but instead served the more limited purpose of a "worksheet" for the prosecutors.

The commission had, however, since July 1, 1984, received (from the court clerk) Judgement and Sentence Forms for all felony cases convicted under the guidelines. This form and close variants were adopted by the Superior Court Judges as an official "patterned form"[76]. In addition, there was a requirement that any case involving an "exceptional" sentence[77] include information on the court's written findings of fact and conclusions of law for departure from the guidelines.

The commission expected to handle 12,000 felony convictions per year. Data entry and initial error correction is done by commission staff on a microcomputer. Each month the data is uploaded to a mainframe for longer term storage and any major statistical analysis. Statistical analysis based on segments of the total data base are undertaken on the microcomputer which is also used to edit statistical reports downloaded from the mainframe.

The sentencing commission is also developing a microcomputer-based system

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75 Use of the exact form is not mandatory.

76 The sentencing commission didn't want to upset the judges by recommending a single uniform form.

77 i.e. a sentence that does not fall within the guidelines ranges.

for calculating the offence severity score, the criminal history score, and the presumptive sentences using data on criminal histories and current offences.

The Washington sentencing guidelines information system operated as a totally "stand-alone" system. The plans for the Washington State Patrol and Department of Corrections information systems did, however, specify that those systems would eventually collect all the information required by the sentencing commission -- the presumption being that the sentencing commission would then go out of the data collection business.

As long as the commission operated a separate information system, the commission had better control over their input data and could, for instance, specify the error checks that would be performed manually and automatically when data was coded. Further, one person more familiar with the guidelines (than the staff of other agencies) could be assigned responsibility for the important and difficult task of interpreting the Judgement and Sentence form.

The Pennsylvania Commission on Sentencing also decided not to rely on existing criminal justice information systems to support the operation of their guidelines. The court Docket Transcript Form (DTF) system was missing key information such as the gravity score of the offence and any aggravating or mitigating circumstances[78]. The main DTF form also followed a different route through the court process than was appropriate for supporting the sentencing guidelines process. Specifically, the judge or probation officer might never see the DTF -- since it was filled out by the Clerk of Court, not by the probation officer or in court by the prosecutor and judge.

In contrast, the main one-page form used by the Pennsylvania sentencing commission's Guidelines Evaluation and Monitoring System (GEMS) is now usually filled out by the probation officer[79] using data furnished by other agencies (e.g. the rap sheet provided to the District Attorney by the State Police) and adding data such as the offence traffic number (which theoretically allows links with other state systems). The presumptive guidelines range is then calculated and the form is sent to the judge who enters the actual sentence. One copy of the form is then sent to the Pennsylvania Sentencing Commission and the other copy becomes part of the official court record (and must, for instance, go with the case on appeal).

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[78] It is interesting to note that the Docket Transcript Form system is recognized as one of the better court Offender-Based Tracking Systems (OBTS's) in the U.S.

[79] In some counties the form was filled out by the District Attorney and in some counties by the judges' staff. The Pennsylvania legislature did not specify what forms to use or how they must be set up. The specifics of both decisions were left to each county.

One county produces the GEMS form using a microcomputer, but the rest of the counties are resistant to the use of computers. The judges in particular are overly sensitive to phenomena even remotely construed as "sentencing by computers".

Microcomputers[80] were used by the commission for the original coding, editing and temporary storage of data. Each week the data was uploaded to a mainframe for additional logical editing checks and permanent storage. If errors were uncovered, then the editor would phone the judges or clerks to check. Changes were then made using on-screen editing. All analysis was done on a mainframe. The option of using microcomputers for longer term storage and analysis had not been explored since the mainframe resources available from the University[81] were both high quality and very cost effective.

The commission coders could comfortably handle 100 cases per day, 200 cases "in a pinch". The coders and commission staff felt very comfortable with their use of microcomputers.

As with Washington, GEM operated quite independently of the other criminal justice information systems. Both the doctrine of separation of powers and general principles for auditing or monitoring any decision-making argue that it would be inappropriate to rely on information from systems controlled by the group being monitored. In general, the commission staff felt they needed their own system to ensure the integrity of their data. They had tried to combine forms with existing systems, but that strategy would not have worked as well. The system would certainly not have been put in place within the required time constraints.

Having a stand-alone information system also provided opportunities for the commission system to help the courts and corrections systems by responding to special data requests or requests for clarification from those agencies. However, perhaps most importantly, the commission staff strongly felt that the act of filling out the special sentencing guidelines forms reinforced significantly the whole guidelines process.

In contrast to the other 2 states, Minnesota chose to develop a guidelines information system that was much more closely integrated with other existing operational criminal justice information systems -- and was developed in close concert with those responsible for other systems.

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80 The Commission had 4 microcomputers equipped with dual floppy disk drives, 1 of which was used for word processing and mailing lists, the other 3 being used mainly for data entry.

81 It was felt that the university could provide better access, and especially faster turnaround, than could other dedicated criminal justice agency computers in the State.

For example,

- commission staff worked with the courts staff to ensure that the MSJIS court forms would meet the needs of the sentencing commission;
- the Sentencing commission records utilized the same complaint identification number (which originated with the prosecutor) that was used by the court MSJIS (The process of linking of court and commission data is thereby greatly simplified.); and
- only one additional form (the Sentencing Worksheet) was introduced especially for the commission.

The courts had, however, just begun developing their criminal information system when the sentencing commission made their specific requests. It also helped that the personalities of the people involved were very compatible. If the timing had been different, integrating the two sets of requirements might have been problematic. Other relevant factors included: the legislature did not like redundancies, there were mutual benefits from cooperation, and the Chief Justice of the courts was supportive of the commission.

The commission staff designed the worksheet which is filled out by the Probation officer after conviction and before the sentencing hearing (which is usually a separate hearing[82] for each offender convicted for one or a number of felony offence(s). This timing allows the probation officer to check out the defendant's prior record and any other difficulties with the assistance of commission staff--prior to the sentencing hearing. Probation officers were trained by commission staff after the implementation of guidelines[83].

After the final sentence is entered by the judge or court clerk, the Sentencing worksheets are sent by the courts to the sentencing commission on an ongoing basis. After being checked by staff and keypunching, the data are entered into the commission's information system data base and undergo a second round of edits. In addition, on a monthly basis, the commission receives computer tapes containing the data from the MSJIS complaint form, transaction reports, and final disposition reports[84].

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[82] The likelihood of a separate sentencing hearing has not increased since the introduction of the guidelines. Presentence Investigations are required for reasons totally independent of the guidelines.

[83] The PSI information could not come from the court system since the courts don't have jurisdiction over probation in Minnesota.

[84] For the first two years, the disposition reports were sent to the commission in hard copy form -- and the commission had to have the data re-keyed.

Commission staff then perform a (mostly automated) reconciliation between the two sources of data[85].

A lot of manual effort is required to integrate court and commission data systems, in large part because the court system performs only minimal edit checks on its data. For instance, sentences are not edited at all by the court system. Nonetheless, despite its failings, the system has met many of the needs of the Commission.

For all of its computer services, the Commission relies on the facilities of the University of Minnesota -- especially their timesharing facilities through terminals located in the commission offices. A major source of information system-related workloads is the preference of the commission to analyze data using the defendant as the unit of analysis, while the courts and the commission's own Sentencing Worksheet use the "complaint". The complaint-based court records must therefore be transferred by commission staff to a defendant-based format for analysis. This requirement to a large extent explains the rather complex structure of the commission's database[86].

The Minnesota Sentencing Guidelines Commission now has data pertaining to all cases for periods ending in September of 1981 (5,500 cases/ 5,256 defendants), 1982 (6,022 cases/ 5,765 defendants), and 1983 (5,562 cases/ 5,308 defendants). For each of these cases, data is available for a wide range of factors related to criminal history, sentencing, demographic factors and court processing.

In addition to data regularly provided by the Sentencing Worksheet and tapes from the courts MSJIS, the commission also has even more extensive and intensive data available from two separate "in-depth" studies undertaken after the implementation of guidelines. These in-depth studies supplement the 1981 and 1982 data sets described above. (Budget considerations prevented an in-depth study for 1983.) The samples included data

> "on alleged offense behavior, victimization, initial charges, plea negotiation information, offender characteristics (e.g., marital status, employment background, and chemical use), and the presence of apparent substantial and compelling aggravating and mitigating circumstances were coded. The latter information provided an assessment independent of the sentence as to whether aggravation and mitigating factors were present in the cases."[87]

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[85] i.e. between the ongoing Sentencing Worksheets on individual cases and the monthly tapes

[86] e.g. data is stored within 40 record types in the data base.

[87] ibid, page 20.

Both samples were selected from cases committed in 8 of the most populous counties to the Commissioner of Corrections (827 in 1981, 784 in 1982) and stayed cases (827 in 1981, 1013 in 1982).

The commission feels

> "The monitoring system maintained by the Sentencing Guidelines Commission contains the most extensive information on sentencing practices for felons that has ever existed in the state and serves as the primary basis for evaluating the impact of the Minnesota sentencing guidelines on sentencing practices for convicted felons."88

4.4. INFORMATION REQUIREMENTS AND AVAILABILITY

Each of the following subsections discusses a specific aspect of the guidelines information systems described in the previous section, and of the processes by which those systems were developed and are now operated on a continuing basis. Many of these "aspects" are similar to those discussed in the previous chapter regarding the situation before the implementation of guidelines.

4.4.1. ORGANIZATIONAL STRUCTURE, RESPONSIBILITIES & WORKLOADS

> "Has the introduction of a sentencing guidelines information system (SGIS) resulted in any significant increase or shifting of workloads and/or responsibilities for any group?"

This question is especially relevant for planning any additional personnel resources that will be required for developing similar systems, and for anticipating sources of assistance or resistance to the implementation of systems.

In Washington the implementation of an SGIS resulted in a significant shift of workloads from probation officers to prosecutors. The 10 page form which was previously filled out by probation officers had to be filled out by prosecutors for the judges. Prosecutors also had primary responsibility for submitting charges and dispositions to the Washington State Patrol criminal histories system. Increased workloads were felt as well by the Department of Corrections which, by law, had to follow up each conviction (even fines).

Washington also (often through legal rules) divided up responsibilities for different aspects of the guidelines systems in a manner that forces reporting and interdependencies among the many agencies who need information to make the decisions that put the guidelines into effect. For instance, the knowledge that defence attorneys will challenge every

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88 ibid, page 17

historical conviction used to determine presumptive sentencing ranges strongly encourages the State Patrol to maintain accurate criminal histories. Similarly if the criminal histories part of the system doesn't work, the prosecutors can't get convictions and sentences under the guidelines. Nonetheless, the commission will publish a list of non-compliers to encourage persons even more strongly to get the guidelines form filled out right.

The commitment of the Governor's Interagency Criminal Justice Work Group has been essential. The judges have mixed incentives regarding the guidelines data systems -- but they do have the biggest block on the commission and have not used it to thwart the SGIS initiatives.

The Pennsylvania guidelines information system (GEMS) is designed to assist in applying the guidelines, and to monitor sentences. The president judge in each county is responsible for the GEMS forms being filled out, but can delegate authority for doing so. For instance, the initial preparation of the form can be done by probation officers or by the district attorney, and the disposition can be filled in by the sentencing judge or the court clerk.

The introduction of the GEMS system has not resulted in much of an organizational shift in workloads for data collection. The form does however give probation officers more of an opportunity to provide input into the sentencing process. On the other hand, there has been a major impact on the absolute level of workloads. The impact was especially significant in counties that were not filling out PSI's before -- although some counties are saving time by substituting the GEMS forms for PSI's.

In Minnesota the PSI's had not changed much since the introduction of sentencing guidelines. They were still prepared if an offender were likely to get a stay with probation (i.e. not for serious offences). Although early in the guidelines process, parole and probation officers complained regarding the worksheet, and the PSI's were made optional, they later became regarded as important. The PSI's were then made mandatory because of the introduction of victim impact statements.

In the late 1970's and early 1980's, the judges voiced considerable displeasure over the additional data required from them to support the new court information system (MSJIS) -- especially regarding data on workloads. For a number of reasons, the commission staff strongly felt that the sentencing worksheet (which includes the official documentation of the prior record and the calculation of the presumptive sentence) should not be delegated to the prosecution. First, most of the information on the form has to be collected by the probation officer anyway to prepare a PSI. Second, the prosecutor is not an impartial participant in the process, and the procedures adopted must guard against the possibility of the prosecutor's treating the elements of the guidelines process (and especially prior record) as matters subject to

negotiation[89]. In Minnesota, any plea bargaining is now done on the basis of assumed presumptive sentences, and bargains are conditional on those assumptions.

4.4.2. REPORTING AND CONFIDENTIALITY

"What steps have been taken to safeguard the confidentiality of, or conversely to ensure the availability of, data from the SGIS?"

Anybody has access to the Washington commission's Judgement and Sentence form. The commission will be issuing a quarterly report at first and will then move to a semi-annual format. Virtually anybody who wants to be on the mailing list is placed on it. Reports will contain, for instance: assumptions underlying custodial population forecasts, the tracking and monitoring of sentences, the prosecuting crime mix, bench vs. jury trials, pleas, etc. The commission also prepares special reports for different audiences, for instance: reports on exceptional sentences and reports on why alternatives are not used for non-violent offences.

In Pennsylvania the commission's data base is made public 1 year after the data is collected. The commission's annual data report, "Sentencing in Pennsylvania", includes a summary for each county. In addition, the Commission irregularly produces a newsletter, the "Monitor", and status reports are sent to the Commission every quarter (or geared to Commission meetings). Finally, the Commission also promotes, and receives, a lot of ad hoc requests for information from a range of public and private groups. To keep the commission from becoming embroiled in political controversy, the Commission will not release information on specific cases and judges -- the names of specific judges are not maintained in computer sentencing files. I

In Minnesota, when the commission gets a year's data ready for analysis, the data is analyzed and a number of reports are prepared. These reports include: presentations to the commission (perhaps not formally written up), reports for population projections, reports to answer fiscal questions from the legislature, and reports to answer questions from the media.

An annual report to the legislature is required by law. However, although the commission's system does contain the judge's identification code, requests received for judge-specific information are refused on the grounds that the data belongs to the courts. As well, there are so few cases per judge that not much useful judge-specific analysis could be done. (Most analysis is done by county.)

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89 The probation officers have had, at times, to resist pressure from prosecutors and defense to bargain charges.

The commission staff often independently choose what issues to address and how to analyze the data. In recent years requests for sentencing information on criminal cases which came to the court administration, were often referred to the sentencing commission. Similarly, the commission sends requests for data on acquittals to the courts.

4.4.3. GENERAL QUALITY AND AVAILABILITY

"What level of accuracy can be expected from the sentencing guideline information systems at different times in their development?"

and,

"What measures can be taken to raise the quality of the data collected ?"

Data quality should be of primary concern to guidelines information systems used to update and maintain databases on criminal records and past sentencing practices -- whether it be to assist the commission and others to monitor sentencing practices in order to identify changes required in policies, legislation, and the sentencing guidelines themselves or to assist in forecasting the likely requirements for correctional facilities. To illustrate, in Washington a relatively minor 2% error in estimates of the number of convictions would result in a forecast error of a magnitude equal to the capacity of 1 prison.

The Pennsylvania commission's enabling legislation contains specific provisions from which the GEMS system draws a range of powers and duties extending from requesting data to serving as a clearing house of sentencing data. Even with that clear mandate, commission staff felt it necessary to try a number of methods to foster cooperation and have the GEMS forms filled in, methods such as: shipping and delivering forms ahead of time; asking for estimates of the number of forms required; asking counties to develop their own procedures for filling out forms; sending questionnaires to ask how they were going to do it; and giving the impression that all other counties were doing it. The commission had also: done projections on the number of forms to expect; had monitored incoming forms; and had followed up shortages with reports of other counties, offers of assistance, and biennial reports back to the president judge of the number of forms submitted and the number of sentences within range.

Even then, the Commission received only 21,000 of an expected 30,000 forms during 1983. However, in 1984 the Commission received 30,000 forms, representing 90% to 95% completeness. There have also recently been some Superior Court judgements favorable to the system. On the other hand, the Supreme Court Procedural Rules Committee did not agree to sanction the form officially, and there has even been one court ruling that the form is unconstitutional.

Although there may be delays approaching 2 and 1/2 months between case disposition and receipt of the GEMS form by the commission, such delays

compare very favorably to those of many other systems in the state.

Those interviewed in all three jurisdictions visited emphasized that one of the more useful roles played by sentencing guidelines and guidelines information systems is that of a catalyst for identifying improvements necessary in other existing information systems. For instance, in Pennsylvania the guidelines have helped provide the incentive for improvements to the links between the State Police and the District Attorneys, and between the Court Administration and the State Police -- especially with respect to the flow of criminal record data. Perhaps most important, is that the guidelines development process exposes the fact that little is known about sentencing.

Finally, data from Minnesota can be used to provide an estimate of the extent of the quality problem that can be expected during the early stages of even a well designed guidelines information system. "The error rate in sentencing worksheets for the first several weeks of guidelines implementation was over 50%. The error rate dropped to approximately 20% six months after implementation, down to approximately 10% after a year of implementation and stabilized at around 3 to 5% eighteen months after implementation."[90]

4.4.4. IMPACT ON CARCERAL POPULATIONS

> "Does the need to provide forecasts of the impacts on institutional populations of alternative sets of sentencing guidelines place additional demands on guidelines information systems?"

The answer to this question is clearly, "yes". The development and use of custodial forecasting models can (and has) put considerable demands on sentencing guidelines information systems.

In Washington the commission data have been, and definitely will in the future be, used to help answer "what if" questions from the Legislature regarding the likely impact of the guidelines on prison populations. By gubernatorial decree the Governor's Interagency Criminal Justice Work Group provides the assumptions for the forecasts[91] which are produced by

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90 Minnesota Sentencing Guidelines Commission, (1984) op cit, page 137.

91 One of the advantages of having the GIACJWG make the assumptions underlying the forecasts is that the heads of the agencies serve on the Work Group and since they make the assumptions, they all accept a common forecast.

the Office of Financial Management's forecasting model[92]. All criminal justice agencies in Washington have had to provide detailed and accurate data to formulate those assumptions and to estimate other parameters of the forecasting model. As noted earlier, the Department of Corrections must follow up each conviction, even fines, so that the forecasters will have accurate historical estimates of the number of convictions.

The sentencing commission has particular responsibilities for providing estimates of future sentences and the times at which the current custodial population will be released. The estimates of releases are based on the expected length of stay, which is in turn based in part on guidelines but requires a lot of additional assumptions and data (e.g. length of good time and presentence time served).

The forecasts are monitored month by month and have been reasonably accurate.

Pennsylvania's limited use of forecasts included an exercise undertaken with the Governor's office which used commission data to estimate prison populations. This was more of a political exercise which underestimated the impact and was never published. The only other related forecasting effort was an investigation of the impact of guidelines on incarceration rates on conviction[93].

In Minnesota the commission works frequently and closely with the Department of Corrections in preparing prison population predictions using the sentencing commission data base. The forecasts are done at least once a year and the underlying assumptions are reconsidered at least twice a year. However the frequency of the forecasts depends on how nervous the Department of Corrections is with the previous forecasts, recent developments in a number of areas, and the frequency with which new sentencing data arrives.

In Minnesota, custodial forecasts are also used in a special and relatively innovative way -- to find ways to achieve policy goals regarding how many prison beds are wanted. This task requires special types of projection models, models that allow one to change the underlying assumptions that describe alternative governmental policies and judicial sentencing guidelines so that the resulting conditional "forecasts" are in the vicinity of the desired policy goals.

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92 The model is described in, State of Washington, Prison Population Forecast for Washington State FY 1982-1995: Technical Programming Documentation, Office of Financial Management, Division of Forecasting & Estimation, (1982).

93 Kramer, J.H. and R.L. Lubitz, Pennsylvania's Sentencing Reform: The Impact of Commission Established Guidelines), Presented at the Annual Meeting of the Academy of Criminal Justice Sciences, Chicago, Illinois, (1984) pages 24 to 25.

Most of the policy questions that are addressed by the models are of the form, "What can (or should) we do with sentences (or other policy instruments) related to specific offences?". Most data to support the forecasting efforts must therefore be offence specific to facilitate offence-specific forecasts.

A specific example of the extra data collection work imposed by the priority assigned to forecasting prison populations, is the requirement for a form reporting all revocations (since revocations are another source of admissions to, and therefore populations of, prisons). Since the Commission feels that it has not been as diligent as necessary in training and encouraging probation officers to fill out the form, it must each month undertake the tedious task of comparing data received to a backup list of revocations obtained through a different procedure.

4.4.5. OFFENCE TYPE

"What implications does the introduction of guidelines have for the coding of the legal type of offence?"

A common problem in sentencing analysis is that the legal classifications of offences as contained in criminal codes and other statutes are not discriminating enough -- either to allow one to distinguish sufficiently well among offences in different legal classifications, or to allow one to assume with any surety that there are no significant differences among offences within the same legal category. The problem is very likely to be exacerbated if one is forced, as with most sentencing grids, to group offences within an even smaller number of categories.

In Washington, even though the sentencing grid has only 14 categories of offence severity, it was considered essential for purposes of monitoring and review that the guidelines information system record offences by subsection of Code.

Minnesota has adopted an alternative approach -- to revise the Code to ensure that each section contained more homogeneous groupings of offences.

4.4.6. PRIOR RECORD

A question of particular concern to those considering enhancements to the main Canadian repository of criminal records (the RCMP CPIC[94] system) is

"How important is it to have accurate data on criminal histories?"

In Washington the introduction of guidelines has meant a requirement for better criminal histories data. The Washington State Patrol estimates that its criminal histories data base contains roughly 1/2 of the criminal histories that should be recorded. Records of out-of-state offences are particularly hard to get.

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[94] Canadian Police Information Centre

To monitor whether sentences are within guidelines ranges, it is sufficient to have accurate data on what the judge believes the criminal history to be -- complete and accurate criminal historical records are not as necessary. However, the quality of prior record data is a problem from a number of other perspectives. For instance, prosecutors want the real record since inaccurate criminal histories could be grounds for appeal. In addition, prosecutors involved in pre-trial negotiations require the prior histories earlier on in the court process. (Before the guidelines, the prosecutor would get priors through the PSR which was prepared after conviction.)

In Washington, obtaining criminal histories involves starting with the FBI rap sheet, but then calling up the police in the offender's location of residence and the department of corrections. Under the proposed system the Washington State patrol will get the criminal history as used in court and will get out-of-state records as well from NCIC[95]. Mechanisms will also be put in place to capture the results of appeals. Clearly, sentencing guidelines have acted as a catalyst for improvements to other information systems.

As noted earlier, in Pennsylvania there were serious problems regarding the completeness and quality of the data on prior record which was only available from the State Police. Now, again,as a result of guidelines, data on the rap sheet has been improved. Everybody should now be fingerprinted for all arrests (felonies and misdemeanors) and if the State Police get a request for fingerprints, then the Police automatically send the rap sheet to the defence and prosecutor. Similarly, the police now get all dispositions from the state court docket system. Rap sheets now also show the grade of crime (a variable required for the guidelines).

In Pennsylvania as in other states, juvenile records pose a particular problem. A juvenile record counts if the juvenile conviction would have been for a felony if an adult had done the same thing. However, one would have to go to manual court records to find juvenile records so they usually are not found[96]. In general, state rap sheets are improving, but serious problems still exist.

In Minnesota prior sentences are counted for purposes of the guidelines, not convictions[97]. All misdemeanor priors were initially excluded from criminal histories for purposes of applying the guidelines. Now DWI convictions are included.

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95 Records as used in court will also be sent to NCIC.

96 A recent court case is contending that the use of Juvenile records for purposes of applying guidelines is unconstitutional.

97 In addition, out-of-state convictions are treated as a Minnesota offence.

4.4.7. PROSECUTORIAL PRACTICES

One of the major criticisms of attempts to structure judicial or parole board discretion is that the attempts often end up simply shifting the exercise of that discretion to the prosecutors.

In general, Washington interviewees felt that prosecutors' changing charges or criminal histories was not a problem. Judges would not tolerate it if prosecutors were to withhold criminal history information from the court. On the other hand, what impact the guidelines will have on charging practices is of concern in Washington, particularly since under the old system, charging was not very accurate (discrepancies could be corrected later by the Parole board). Washington is also the only state to develop prosecutorial and sentencing guidelines together -- although the prosecutorial standards are much more general in nature with the proscribed behaviour being amorphously defined and the guidelines containing no sanctions for violations. Those developing prosecutorial standards had great difficulty in being more precise in quantifying and monitoring "judgement calls" for specific cases[98].

Nonetheless, the Washington commission will be monitoring charging practices to try to ensure that sentencing guidelines are not used by prosecutors to manipulate pretrial negotiations.

Interviewees in Pennsylvania felt that one of the major weak links in the system is that there is no information on prosecutorial discretion. The Pennsylvania commission was therefore planning a 1 year study starting in the summer of 1985 with the Pennsylvania Commission On Crime And Delinquency -- in part to test the suspicion that charging practices have changed since the inception of guidelines.

The Minnesota sentencing commission, as part of its most recent major evaluation of its guidelines, investigated 6 areas related to prosecutorial discretion:

> "1) method of obtaining conviction: 2) multiple charges for single behavioral incidents: 3) mandatory minimum provisions for weapons offenses; 4) vertical charging practices, that is, charging practices that affect the severity level of the conviction offense; 5) horizontal charging practices, that is, charging practices that affect the criminal history score of the offender; and 6) sentence negotiations."[99]

That evaluation confirmed the necessity of collecting data on pretrial practices. The study found

> "Prosecutorial practices have changed since implementation of the Guidelines. There were more charge negotiations and fewer

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98 A California study spent $1 million to study 2 crimes and 3 counties -- and the results were totally inconclusive.

99 Minnesota Sentencing Guidelines Commission (1984) op cit, page 71.

> sentence negotiations. There were more charge reductions that affected the severity level of the offense and an increase in the number of conviction offenses which affected the criminal history score of the offender."[100]

However, more disturbing were the findings that the prosecutors and defence were negotiating elements of the criminal history. Further, the changed charging and negotiating practices of prosecutors had affected the criminal history scores of offenders and resulted in the imprisonment of more property offenders than originally intended[101]. Minnesota has, however, encountered great resistance to limiting prosecutorial discretion. On the other hand, it is possible to structure discretion in assigning criminal history scores (e.g. by having the probation officers calculate the scores).

4.4.8. COURT CASE PROCESSING

Little if any information is collected in ongoing guideline information systems related to the way in which the case is processed through the law enforcement and court systems prior to sentencing.

4.4.9. OTHER VARIABLES

Similar to the situation found during the guidelines development period, the information systems that have been developed to support the guidelines process on an ongoing basis in all three states collected "baseline" data of considerable scope and detail .

All those interviewed agreed that one could always identify additional data that was not collected but which might have some relevance to guidelines issues. However, interviewees were all generally content with the decisions that had been made regarding the scope of their current ongoing information systems.

Those in Washington, for instance, felt it would be impractical to get more detailed data on the characteristics of each case. The added (large) expense of collecting on an ongoing basis additional data elements[102] could not be justified. Such data was better dealt with by special data collection projects that could focus on more specific samples of cases and issues. As well, in general the commissioners were comfortable with decisions made not to collect data on detailed characteristics -- although one must look at that decision in the context of the indeterminate sentences and lack of data that existed before the guidelines.

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[100] ibid page vi

[101] ibid page 131.

[102] for many of which special training and expertise on the part of the data collectors to collect valid information would have been required.

Nonetheless if more resources had been available, they would have liked to have had more detailed data on: whether mitigating and aggravating circumstances applied in a wider number of cases, and whether multiple terms given to individual cases in the baseline data sample had been consecutive or concurrent.

In Pennsylvania one of the rules of thumb used in deciding whether or not to ask for additional data from criminal justice officials was that "one should only ask for data that doesn't require the respondent to leave his/her office".

It was felt that if one of the objectives of the guidelines were to promote fairness and equity in sentencing, then "before" and "after" data would be needed on variables such as race, age, sex, rural/urban location, etc. Pennsylvania in its evaluation did test whether sentences were neutral with respect to race and with respect to the urban/rural nature of counties. Additional information on a small number of additional data elements would have been useful, elements such as: -initial charges, personal history, and data on the whole area of plea bargaining and system adjustments.

Staff here also agreed that practically one cannot collect such data routinely. It must be collected through special projects.

Minnesota interviews pointed out that one generally needs more data during the design stages than one needs during the monitoring stages of the guidelines process. After implementation, one must rely on special surveys for much of the detailed data required[103]. Among the variables for which more information would be useful would be: the date of the offense, and the age and the gender of the defendant. It was also felt important to monitor the impact of guidelines on court workloads and case processing. Minnesota does collect some data on such matters and found that the overall rate of trials did not increase significantly, the time between conviction and sentencing changed very little, and less than 1% of presumptive sentences were appealed[104].

4.4.10. ALTERNATIVE PROGRAMS AVAILABLE

None of the jurisdictions visited seemed to be collecting on an ongoing formal basis data on the types and nature of public and private programs available to administer different types of sentences.

4.4.11. DEVIATIONS FROM GUIDELINES

An ongoing sentencing information system is necessary if a commission is to be able to monitor trends in sentencing and the degree to which sentences remain within the guidelines. Of interest then is,

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[103]Minnesota has conducted two such "in-depth" studies.

[104]Minnesota Sentencing Guidelines Commission, (1984) op cit, page vi.

"What types of sentence monitoring reports are produced, and what use is made of them?"

In Washington departures from the guidelines must be justified in writing and are subject to judicial review. The commission will report on exceptional sentences (using summary, not individual, measures). Equally important, the commission will also use the data on deviations from the guidelines to monitor whether the guidelines are appropriate. Not storing the name of the sentencing judge on the automated system[105] has two implications. First, the commission can't evaluate sentencing practices of individual judges[106], and individual judges can't use the data to develop a better understanding of their own sentencing practices.

Pennsylvania codes the mitigating and aggravating circumstances in the GEMS system, and reasons for departure from the guidelines as well. This information is very useful in providing feedback regarding the applicability of the guidelines.

The commission's annual reports usually focus on the degree of conformity, actual sentences, and reasons for non-conformity. In addition, special reports have evaluated the impact of guidelines on both sentencing practices and sentencing disparity (after controlling for severity and prior record)[107]

The commission has made a number of changes to the guidelines based on analysis of the GEMS data (for instance, in response to high departure rates). However, to be a full evaluation system, GEM would also, for instance, require defendant-based sentences time served, and (to facilitate judge-specific analysis or monitoring) the names of specific sentencing judges. Requests for judge specific information meet the commission's policy of not giving out judge-specific data. (No judge has ever asked for his own record). Leaving the judges' names off the system also minimizes the likelihood of the commission's becoming involved in political in-fighting. On balance, commission staff felt that it was not worth jeopardizing the whole information system, since the system is dependent on the provision of data by the judges.

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[105] The Senate has approved a bill to put the sentencing judge's name on the conviction record. Although the bill will probably pass the House of Representatives as well, the court is supreme to the legislature in matters regarding court rules. The court would pass rules to nullify the law.

[106] In any case, the commission wouldn't want to get involved in the likely political battles that use of such data would occasion. Having the county of sentencing is sufficient for the commission's purposes.

[107] e.g. pages 21-24, 30 of Kramer, J., and R. Lubitz, "Pennsylvania's Sentencing Reform", (March, 1984)

In Minnesota special "departure forms" are filled in stating any reasons for departing from the guidelines. Using this data the commission was able to estimate that approximately 9% of 6000 cases represented departures from the guidelines.

The Minnesota commission also monitored whether disparity in sentencing practices decreased after the implementation of guidelines. They found that sentences were more

> "uniform in terms of who goes to prison and in how long imprisoned offenders serve. Sentences were more proportional in that offenders convicted of more serious offenses received more severe sanctions than prior to the sentencing guidelines."[108]

Minnesota also evaluated whether or not sentences exhibited any racial biases, or any biases with regard to the gender or employment status of the offender. Much of this and other evaluation analysis was done separately for different regions.

4.4.12. RESOURCES AVAILABLE AND UTILIZED

Issues regarding the resources utilized to develop the ongoing guidelines information systems include:

> "From where did the commissions draw the expertise to develop the information systems?",
>
> "What was the level of resources required to develop the systems?", and
>
> "From what source was funding provided?"

As with previous sections, we will concentrate on findings that add to the comments already made in Chapter 3 earlier.

The major tasks necessary to develop all the ongoing information systems discussed in this report (e.g. data edits, development of forms, data storage structures, data analysis structures, reporting formats, etc.) were undertaken either directly by, or under the direct supervision of, internal permanent staff of the commissions. As with the development of the baseline data described in the previous chapter, the commission staff seemed to have been given considerable latitude in these tasks. The quality of the systems depends to a considerable extent on the understanding of the sentencing issues to be addressed by data from the system, and on the technical expertise brought to the design task by those staff members. Although consultations were held with outside

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[108] Minnesota Sentencing Guidelines Commission (1984) op cit, pages v, vi.

groups[109], those consultations were more to ratify and test tentative decisions reached by staff -- than to seek original designs or solutions. Commission staff were also often asked to contribute to defining certain elements of the design of information systems of other criminal justice agencies.

This development work was also accomplished with relatively small permanent staffs. The Pennsylvania commission, because of the larger volumes of cases to handle, had the largest staff. However, the staff there included only 1 director (2/3 time), 3 full time staff, 1 secretary, 1 administrative assistant (3/4 time), 2 graduate students from the university (1/2 time) and 3 work studies assistants (1/4 time). That staff handled all the work required to operate the GEMS system and to undertake the other work of the commission as well.

All of the commissions were funded by the state, and all felt it was necessary for political reasons to be funded by the highest level of government possible. Both Pennsylvania and Minnesota have, however, received funds from outside sources to support specific parts of their work.

4.5. SUMMARY OF KEY FINDINGS

When we conducted our interviews, the ongoing information systems maintained by other criminal justice agencies had seen no major changes in Pennsylvania, but major changes had occurred in Minnesota and an equally major change was being implemented in Washington. However, even though each of the states had, or was planning to have, quite extensive law enforcement, court, and corrections information systems, none of the systems was able to meet the requirements of the sentencing guidelines commissions for certain types of data. Each commission was therefore forced either to develop its own separate "stand-alone" guidelines information system, or to develop enhancements of the existing system to provide the extra data needed. Washington and Pennsylvania took the first approach, Minnesota took the second.

The examination of the experiences of the 3 jurisdictions brought out the following important points:

- the introduction of the sentencing guidelines information systems often results in significant shifts in workloads from one agency to another, and often in a net increase in overall workloads;

- the introduction of sentencing guidelines information systems

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[109] e.g. in Pennsylvania, consultations regarding certain aspects of the programming were undertaken with the university computer systems personnel, and regarding forms design with court administrators, judges, the Governor's office, etc.

often results in some groups having significantly increased (or decreased) influences in decision-making regarding sentences;

- the introduction of sentencing guidelines information systems often acts as a major catalyst for improvements to the information systems maintained by other criminal justice agencies;

- the introduction of sentencing guidelines information systems often acts as a major catalyst for developing a real understanding of how little is known about sentencing practices;

- the introduction of a sentencing guidelines information system is likely to be accompanied at first by major problems regarding the quality and quantity of data collected;

- requiring a commission to consider the impact of alternative sets of sentencing guidelines on custodial populations will place significant additional demands on a sentencing guidelines information system;

- Minnesota and Washington especially felt that consideration of the impacts of alternative guidelines on custodial populations should constitute an integral part of the guidelines process;

- accurate and complete data on criminal histories will play a key role in sentencing guidelines, and will be responsible for a substantial part of the data collection work required;

- there is a major requirement for data that monitors prosecutorial pre-trial decision-making (However, there are many difficulties to be overcome in developing reliable methods with which to monitor that decision-making);

- the systems reviewed do not include comprehensive data on the pre-sentencing processing of a case by the police and the courts;

- the collection of certain types of data (e.g. detailed data on the characteristics of offenders and offences) may have to be handled by special data collection projects, and not by ongoing guidelines information systems;

- the collection of detailed data in a wide range of areas is essential for the effective monitoring of sentencing and the operation of the guidelines system; and

- the sites visited are all to be commended for the quality of the data collection and information system development work they accomplished with relatively modest resources.